99th CONGRESS
1st Session

SENATE

REPORT
99-25

LEGISLATIVE AND OVERSIGHT ACTIVITIES DURING THE 98TH CONGRESS BY THE COMMITTEE ON SMALL BUSINESS

REPORT

OF THE

COMMITTEE ON SMALL BUSINESS
UNITED STATES SENATE

APRIL 3 (legislative day, FEBRUARY 18), 1985.—Ordered to be printed with illustrations

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Mr. WEICKER, from the Committee on Small Business, submitted the following

REPORT

CHAPTER I. SMALL BUSINESS AND THE ECONOMY

Over the past two years, the U.S. economy has moved forward both in terms of employment and overall national output. Small businesses have been the catalyst of this growth.

The increased health of our national economy can be expressed in a number of ways. First, the rate of unemployment has declined from a high of 10.7 percent in 1982, to 8.1 percent in 1983, and to 7.1 percent in 1984. Of course most of this decline is related to the increased production of goods and services by our economy. In 1983, for example, the Gross National Product increased by 6.1 percent, and in 1984 the real growth of GNP accelerated further to a rate of 6.8 percent.

The best news of all, perhaps, is that this increased growth, and increased employment, was not fueled by inflation as in previous recoveries. Over the period 1982–1984 there was a consistent decline in the annual rate of inflation in the economy, from a 4.4 percent rate in 1982 to a 3.7 percent rate in 1984.

Also, earlier this year, the Department of Commerce noted the growth in GNP for 1984 was the highest such rate since 1951, and the rate of inflation for 1984 was the lowest since 1967. This combination of high growth in the production of goods and services and a low rate of inflation make this recovery unique in the recent experience of the U.S. economy.

Small businesses have shared in and sustained the current economic recovery. Of particular importance is the contribution that small businesses have made in reducing unemployment, a role that small businesses have played during previous economic recoveries. In 1976, for example, small firms with fewer than 100 employees

represented 37.4 percent of total employment, and these same firms generated 52.7 percent of net employment growth from 1976 to 1982.

In this connection, it is worth noting that all of the one million net new jobs created during the recent recession were created by businesses with fewer than 20 employees. Employment increases in small business-dominated industries in construction, finance, insurance, real estate and services all exceeded those gains made in industries dominated by large businesses. In construction, for example, small business-dominated industries grew at a rate of 18.9 percent while large business industries showed a loss rate of 10.6 percent of their employees from October 1982 to October 1984. Small business-dominated service firms registered a 12.6 percent increase in employment over the first six months of 1984.

Furthermore, of the 6.5 million new non-farm jobs created during the period from November 1982 to October 1984, industries dominated by small businesses created their share of these jobs at twice the rate of job creation by industries dominated by large firms. Put another way, employment in small business-dominated industries expanded by 11.4 percent from October 1982 through October 1984.

The recent growth in new small business starts is also impressive. As the President's 1985 Report on the State of Small Business points out, "New businesses increased steadily in 1984, whether measured by actual small business starts or by new incorporations. The upward trend clearly reflected the * * * positive expectations about growth possibilities in the American economy." As evidence of this upward trend, entrepreneurs were able to incorporate approximately 325,000 new businesses in the first half of 1984, an increase of 8.6 percent over the previous period. Overall, small business start-ups increased 7 percent over the same period. Since that time this trend has continued, especially in small business agricultural, construction, and service entities.

The increased demand for certain new products and services that has occurred over the past two years has been reflected in the increased sales and profitability of certain small business oriented industries. For example, retail sales in small businesses increased by 7 percent over the first six months of 1984 compared to a 5.5 percent gain in large firms. Specific small business retailers, such as bakeries, radio and television, increased their sales by over 14 percent from October 1983 to October 1984. Small business-dominated wholesale industries showed less dramatic but similar increases in sales. Finally, net income for sole proprietorships and partnerships was up 33.7 percent during the first six months of 1984 compared to the first half of 1983. This growth in 1984 came on the heels of an 11.3 percent increase in 1983 and a 10.4 percent decline in 1982.

There are still other examples of small business oriented industries that have flourished over the past two years. Small residential construction firms were quite active over this period due to the increase in housing starts, and special trade contractors associated with residential construction also benefitted from the increased construction of new homes. As noted in the President's 1985 Report on the State of Small Business, many of these small business dominated industries grew between 10 and 20 percent in 1983 alone.

There are, of course, other aspects of small business performance over the past two years that deserve mention. First, the rate of small business failures and bankruptcies has not declined as much as might be expected given the current economic climate.

However, even this sobering news is tempered somewhat by the gains that have been made in certain aspects of small business ownership. For example, in 1984 there were 3.1 million female business owners, and the available data suggests that the number of female sole proprietorships has increased substantially over the period covered by this report. This is a continuation of an earlier trend in which the number of female sole proprietorships had increased by 46 percent over the period 1977–1982.

In general it can be said that the economic recovery of today has created an environment in which small businesses can grow. The Committee on Small Business remains concerned about the impact of persistently high interest rates which limit entry into the market, hamper growth and contribute to many small business failures. The Committee will continue to do its utmost to improve the environment for small business, and to encourage the continued growth and development of this dynamic sector of our economy.

Chapter II. Capital Formation and Taxation Proposals

A major priority for the Committee during the 98th Congress was to continue to help bring about changes in the nation's tax laws in an effort to promote increased capital investment, productivity and job creation within the small business sector of the economy.

Committee members believe it is important for federal policymakers to acknowledge the valuable contributions made by small enterpise to our national economic growth, and recognize that small concerns have needs differing from those of large businesses which must be addressed.

SEC GOVERNMENT-BUSINESS FORUM ON SMALL BUSINESS CAPITAL FORMATION

In recognition of the importance of the small business to the domestic economy, and the severity of the continuing capital formation problems that small concerns encounter, Congress passed and the President signed into law the Small Business Investment Incentive Act in 1980. This law directed the Securities and Exchange Commission [SEC] to conduct an annual government-business sponsored forum "* * * to review the current status of problems and programs relating to small business capital formation."

Congress also mandated that participation in this Government Business Forum include other entities, such as the Small Business Administration [SBA], the Department of Treasury, the Board of Governors of the Federal Reserve System, organizations representing state securities commissions and small businesses and professional organizations concerned with capital formation.

The first Forum was held in 1982 and addressed issues relating to income taxation, credit from banks, access to financial institutions and the raising of capital. A report encompassing 37 specific

recommendations was presented to the Congress and to the appropriate agencies in November of that year, just prior to adjournment.

SEC Forums are to be held yearly. In an effort to encourage more direct participation by local small businesses, the 1983 Conference consisted of a series of five field hearings across the country. As in 1982, the testimony received was consolidated by SEC staff members in the form of national recommendations. This same high quality input provided further guidance to Committee members on how best to increase small business access to capital.

The 1984 Forum returned to the format of one national meeting in Washington. The general tone of the recommendations of the Forum was most helpful. One of the proposals specifically addressed the then-current Congressional debate on imputed interest on seller-financed sales of property, an issue resulting from provisions of the Tax Reform Act of 1984, Public Law 98–369. The Forum strongly encouraged Congress to revise the new law as it applied to seller financing of smaller capital transactions. The 98th Congress did pass a compromise six-month delay in the effective date of this provision of the 1984 law as it applied to borrowing in the amount of not more that $2 million on seller financed sales of property.

SMALL BUSINESS PARTICIPATING DEBENTURES

The first recommendation of the initial SEC Forum was for the adoption of a small business participating debenture (SBPD). Chairman Weicker, who had originally introduced legislation creating the SBPD bill in 1979, reintroduced an SBPD bill, S. 842, in early 1983. He was joined in this action by Senators Hatch, D'Amato, Nunn, Baucus, Boren, Huddleston, and others.

A hybrid intrument designed to provide a small business with greater access to capital, the SBPD is a cross between debt and equity, with a portion of the annual return on an SBPD measured by reference to the earnings of the issuer. This participation share would be treated as long-term capital gains to the investor, yet would be deductible as interest expense to the issuer.

On October 28, 1983, the Subcommittee on Taxation and Debt Management of the Committee on Finance held a hearing to consider various tax bills, including S. 842. Chairman Weicker testified in favor of S. 842, as did other supporting groups. In his testimony, the Chairman noted that the SBPD "allows a small business owner to retain total ownership and management control of his business, while at the same time providing him with the external capital he needs." He went on to note that any small business owner relying on SBPD financing,

> * * * obviously would not have access to conventional fixed-rate debt through more usual channels. Immediately coming to mind are new, emerging small businesses which have not yet had sufficient time to establish the steady income record necessary to satisfy the debt service projections of most financial institutions.

The Chairman recalled an earlier estimate of the Joint Committee on Taxation on the 1980 version of the SBPD, which was accompanied by an editorial comment that these revenue loss calculations do not reflect the additional taxs revenues generated from the small business sector financed through SBPDs:

> According to the Joint Tax Committee, if you assume a 10 percent return on the SBPD, there is no loss to the Federal Treasury due to the enactment of this bill. With a 12 percent return and factoring in tax on shareholder income, this bill could raise as much as $2.2 billion.

Chairman Weicker countered the adverse revenue projections expected from the Treasury Department:

> While there is a wide disparity of view on this essential question of revenue cost, the provisions of the legislation creating the SBPD changing existing law (i.e., both the investor capital gains treatment and the issuer deductibility of the profit participation share) which might adversely affect Treasury revenue become operative *only if and when* the borrowing business earns a profit.

"Reflow" has to be recognized if any revenue estimate of S. 842 is to be valid, as there is reflow before any adverse revenue impact is possible.

The SBPD proposal continues to be advocated each year in national small business conferences, including the SEC Forum and the Small Business National Issues Conference. An undated version of SBPDs will be introduced again early in the 99th Congress.

SMALL BUSINESS CAPITAL FORMATION TAX ACT

During the 98th Congress, the Committee continued legislation efforts toward the adoption of many of the capital formation tax proposals offered in earlier congressional tax debates.

The introduction of S. 1043, the Small Business Capital Formation Tax Act represented an early initiative by several Committees members to address small business capital formation and retention needs. Senators D'Amato, Weicker, Nunn, Baucus, Huddleston, and others cosponsored this bill.

S. 1043 included seven of the 1982 SEC Forum recommendations to enhance small business capital formation, including such tax incentives as a more graduated rate schedule for the corporate income tax, an increased capital gains deducation for the sale of any small business equity investment held longer than five years, a tax credit for equity investments in qualified small businesses, the cash method of accounting for very small businesses, and a deferral of tax for a gain on the sale of capital assets to the extent to which that gain is reinvested in any qualified small business within one year.

The Small Business Subcommittee on Urban and Rural Economic Development, chaired by Senator D'Amato, held a hearing on July 13, 1983 on "Various Small Business Capital Formation proposals and Their Job Creation Potential." Examined at this hearing were S. 842, S. 1043, and S. 371, a bill introduced by Senator Sasser to expand the targeted jobs tax credit to provide an extra

incentive to small businesses that hire long-term unemployed workers. Witnesses testified on the specific benefits of these three bills, providing the Committee with a general insight into the capital needs of small businesses. William J. Donohue, Chairman of the New York State Department of Commerce, testified on behalf of the business interests in the State of New York, and noted that not only are state resources to provide assistance to small business limited,

> • • • but the present structure of federal business taxes and investment regulations, the nature of our capital markets, combine to deny ready capital to small and new businesses. This is nothing new, particularly for equity and long-term debt, even where there are strong potentially profitable investments. Large banks, insurance companies and other financing institutions are not closed to small companies. It is simply economically inefficient, in their eyes, to consider investment in many instances in such companies.

Mr. Donohue also mentioned the State's need for industrial development bond [IDB] financing, complimenting Senator D'Amato on his strong support for IDBs and equally strong fight against legislative attempts to curtail or at least reduce the effectiveness of IDBs as an aid to small business development. Mr. Honohue discussed the merits of these bills under consideration at the hearing, speaking largely in favor of most of their components.

Daniel S. Gregory, speaking on behalf of the National Venture Capital Association, expressed his association's strong endorsement of the recent philosphical realignment of the capital taxation policies of this country. He noted that the 1978 tax law changes reversed a long-standing national policy which discuraged productive investment, by implementing a bias in the tax system against savings, investment, and risk taking. Mr. Gregory further elaborated on this point:

> For a period, we were taxing our seed corn in this country. Now, however, we are seeing new crops that have developed from the investment of funds which might have otherwise been taxed away. Similarly, we are seeing new crops from the investment of funds which might not have been chosen from the high risk route of long term developmental investing, were it not for an attractive differential between income tax rates and rates on capital gains.
>
> In addition to absolute rates of capital gains taxes, long term developmental investment is sensitive to the differential between rates of tax in income and capital gains. It is disappointing to note the occasional reappearance of the simplistic notion that capital gains and income should be taxed at the same rate.
>
> Equally important is how capital gains taxes impact the incentives of an entrepreneur to give up the security of an established job with its high income and choose the highly productive, high risk route of new company formation and technological development.

Such testimony reinforced the Committee's intention to be active in Congressional development of future tax legislation, particularly as it affects the interests of small businesses.

CAPITAL FORMATION IN A SPECIFIC GEOGRAPHICAL REGION

During the 98th Congress, Senator Kasten chaired a hearing of the Subcommittee on Entrepreneurship and Special Problems Facing Small Business on the unique problems of capital formation in the Upper Midwest. On August 22, 1983, in Eau Claire, Wi., The Subcommittee heard testimony from representatives of national and regional trade associations and local small businesses throughout Wisconsin. Bill G. Smith, Director of the National Federation of Independent Business in Wisconsin, stressed the importance of small business to the economy of every state:

> While governors do not often participate in ribbon-cutting ceremonies to open new small businesses, we must recognize that small business is, indeed, the backbone of any state's economy. Regardless of the magnitude of the industrial recruitment and concomitant job location aspects of such policy, no state's economy can thrive without a business climate that is conducive to the small entrepreneur.

Samuel Hope, speaking for the Independent Business Association of Wisconsin, noted that the conclusions of the 1982 SEC Forum on Capital Formation deserved serious Congressional consideration. He urged Senator Kasten to promote IDBs and SBPDs because association felt that both of these were especially helpful for small business capital formation at the state and local levels.

Chapter III. White House Conference on Small Business

A primary responsibility of the Committee is to further the interaction and communication between small business and the federal level officials who develop and implement economic and regulatory policies. The White House Conference on Small Business proved extremely useful in fulfilling that objective when it was first held in 1979–80, and during the 98th Congress the Committee made a priority matter the enactment of legislation mandating the reconvening of the White House Conference in 1985–1986.

1979–80 WHITE HOUSE CONFERENCE ON SMALL BUSINESS

The first White House Conference provided an historic opportunity for small entrepreneurs to debate and express their views on a wide range of subjects and was a great success. It helped to galvanize the small business community around a single, comprehensive agenda that called upon both the legislative and executive branches of the Federal Government to take action on a broad range of policy issues of concern to them, including tax reform, deregulation, and federal procurement policy. The Conference consisted of 57 state and regional meetings, culminating in a national conference in January 1980. The entire procedure involved over 50,000 small business people from all 50 states.

The national conference delegates put forth 60 recommendations in 12 major policy areas. Fifteen of those proposals were ranked as top priority issues requiring immediate attention by the nation's policy-makers. A large number of major policy recommendations for the 1980 Conference prompted legislative or administrative action, with thirty-eight of the 60 having resulted in such action.

A SECOND WHITE HOUSE CONFERENCE ON SMALL BUSINESS

On March 15, 1984, the Committee's National Advisory Council held its fourth annual meeting in Washington. Among the actions advocated by the panel was the reconvening of the White House Conference on Small Business. A formal declaration to that effect was passed, and the text follows:

> Whereas the small business sector is the engine that drives the economy;
>
> Whereas small businesses are responsible for 80 percent of the new jobs created and 50 percent of all new innovation;
>
> Whereas the 1980 White House Conference on Small Business set forth an agenda of sixty recommendations for federal action to improve the environment for small business;
>
> Whereas four years have elapsed since that White House Conference on Small Business and a large majority of these recommendations have been acted upon;
>
> Whereas the small business community recognizes the need to update and review its role in the economy and its relationship with the Federal Government;
>
> Whereas in 1979 Congress appropriated $4 million to provide funding for the White House Conference;
>
> Whereas the Advisory Council to the Senate Committee on Small Business believes strongly that the small business owners of this nation contribute significantly to the general health and prosperity of our country; Therefore, be it
>
> Resolved, That the National Advisory Council to the Senate Small Business Committee calls upon the President and the Congress of the United States to reconvene the White House Conference in 1985, and urges the Congress to appropriate funds necessary to insure a successful conference.

In response to this resolution, the strong sentiment expressed by major small business associations, and the successes in achieving the recommendations of the prior Conference, the Committee moved expeditiously to establish a statutory framework for reconvening another Conference. On March 28, 1984, Senators Weicker and Bumpers were joined by over half of their Senate colleagues in introducing S. 2487, the White House Conference on Small Business Authorization Act of 1984.

The measure's provisions required the President to reconvene the National Conference before September 1986, preceded by at least one state or regional conference. The bill would only authorize funds to cover the administrative costs of implementing the Conference, and would further prohibit any reimbursements to the delegates for expenses, as was the case in the 1979–80 Conference.

On March 29, Senator Weicker chaired a legislative hearing on S. 2487. The Committee received testimony from Frank Swain,

Chief Counsel for Advocacy at the SBA, J.R. Kirkland, the Director of Policy Research for the 1980 White House Conference on Small Business, and representatives from some of the major small business interest groups. All of the private sector witnesses enthusiastically supported the reconvening of the White House Conference, and the legislation gained the endorsement of all the business associations present, including the National Federation of Independent Small Business, Small Business United and the National Small Business Association.

Brad Roller, President-elect of Small Business United, echoed the attitudes of the others in stating:

> The most important development of the last White House Conference was small business for the first time found its "voice" in an organized sense. Small Business owners who never before were actively involved in governmental processes have now discovered they collectively can make a difference, that public policy can be shaped so it is more responsive to the entrepreneurial sector. A 1986 conference will serve to once again reenergize the small business community. As a result we can expect conscientious men and women business owners to champion new, innovative ideas as they did following the 1980 conference.

Further, John J. Motley III, President of the National Federation of Independent Business, said:

> Over half a decade will have passed since the last Conference, and * * * the small business community has experienced a major recession and, although a robust recovery is underway, the nation's economic base is undergoing a major restructuring. Therefore, it is time to refocus the public's and Congressional attention on the problems and priorities of the men and women who make America's economic engine run. A White House Conference is tailor-made to do just that.

Most of the discussion during the hearing centered on the organization, administration and budgetary requirements of a reconvened White House Conference. A general concern expressed by several of the witnesses was that the Conference be run by and reflect accurately the interests of individual small business owners and operators and that it be allowed to operate without interference of outside groups or agencies. Mr. Swain, Chief Counsel for Advocacy, elaborated:

> If there is a conference, we ought to try to get the private sector as involved as possible. They ought not to depend on the Federal Government to do all the background work, because as good as I think my office is, we do not have all the wisdom in the world, and I think the private sector should get actively involved in putting together background material and briefing issues.
>
> I would almost suggest a rule that no person be allowed to be a delegate to the conference unless they are a small business owner. I think to the extent that you need government people there or other academic experts as re-

> source people, that is fine. The thing that struck me in 1980 was that there were some people at that conference that really were not business owners * * * a small business meeting is for small business people, and we should make the maximum effort to make sure that the small business voice comes through loud and clear, uninfluenced by other agendas, whether they are government agendas or anybody else's agenda.

Mr. Kirkland agreed, and remarked on the Conference's necessary autonomy:

> The 1980 Conference enjoyed credibility and success in large part because it functioned as a catalyst that brought together grassroots business owners, small business organizations, and public officials. It provided a forum for discussion of ideas and development of recommendations independent of existing institutions. There were, of course, complaints over various decisions, from both government officials and delegates, but this sense of independence served the process well and strengthened the credibility of the recommendations that finally emerged from the Conference. I feel strongly that such independence is the key to the success of a reconvened Conference.

The Committee embraced these concerns and amended the original text of the bill to reflect the recommendations made.

The issue of the composition of the delegations to the Conference was addressed next by the Committee. The panel strongly urged that the national conferrence delegation be limited to small business persons and discouraged the representation of associations in the appointment process. The Committee believed that the White House Conference should be conducted by, and comprised of, individuals who own or operate a small business. While fully acknowledging the need for expertise and technical guidance on the issues by individuals from government, large business, or certain interest and trade association groups during the Conference process, Committee members stated strongly their belief that such groups should serve only in an advisory capacity and not be included in the voting process. An individual who actually owns or operates a small business yet maintains membership within an association would be eligible to fully participate in all aspects of the Conference, including voting.

The Committee then considered the cost involved in planning a White House Conference. The past Conference received a $4 million appropriation from Congress to cover administrative costs, and approximately $400,000 of that amount was unspent and returned to the federal Treasury. In addressing this issue, several witnesses stressed the need for restraint in federal funding for the Conference and a reliance on private sector resources.

Richard Breault, Group Vice President for Policy of the U.S. Chamber of Commerce, stated:

> I strongly urge those planning the conference, including Congress through its appropriations process to bear in mind the foremost concern of the small business communi-

> ty—runaway federal spending and the federal budget deficit. We hope that conference coordinators will not lose sight of the qualities necessary to any successful small business: high quality, maximum efficiency, and an eye to the bottom line.
>
> For this reason, I would encourage Congress to direct conference planners to tap the resources of the private sector whenever possible. The organized small business community has matured considerably since 1980, and should be a valuable source of knowledge and assistance.

Bernard Browning, a representative of the National Small Business Association, added:

> I would urge, whatever we do, not to create a government bureaucracy, whether it be in the Advocacy office or elsewhere, but to contract out as much of this to the private sector as possible.

Mr. Roller declared that:

> * * * (given) that costs have risen appreciably since 1978 when the Congress appropriated funds for the 1980 conference, $5 million would appear to be an ideal authorization and appropriation level. * * * (Such a) level would provide the necessary funds to cover the expense of 50 state meetings, and any necessary regional meetings, as well as the one national meeting. It would also permit the research and development of background issue papers which was done in preparation for the 1978–79 state and regional conferences.

The Congressional Budget Office estimated the necessary authorization level to be $5.3 million for 1985 with outlays of $2.4 million in 1985 and $2.9 million in 1986. While the Committee saw these figures as realistic, it decided not to provide any specific authorization in the legislation. The Committee will rely on the Conference to assess its financial needs, establish a partnership with private sector sources of support and recommend an appropriate level of the federal contribution at a later date. This process will impress the planners with the need for fiscal responsibility, provide maximum management flexibility, and hopefully result in a cost savings.

As far as costs to the small business participants, the witnesses reaffirmed the attitude of small businesses that they wished to pay their own way and are not looking for federal funds to defray their personal expenses. There was concern, however, that an excessive registration fee could potentially discourage participation, particularly in the case of the state and regional conferences. Therefore, S. 2487 limited the registration fee to $10.00 plus the cost of a meal, if provided. The fee should be used to defray a portion of the costs associated with the rental of facilities, and equipment. Again, private sources of financial assistance will be sought out and utilized to the maximum extent possible.

After unanimous Committee approval on April 6, the White House Conference on Small Business Authorization Act of 1984 cleared the full Senate without dissent three days later and was

passed by the House on April 9. President Reagan signed the measure on May 8, and it became Public Law 98–276.

Chapter IV. Small Business and Government Procurement

THE FEDERAL PROCUREMENT MARKET

During the 98th Congress, the Committee devoted a very substantial portion of its attention and effort to the federal procurement process and the complex issue of how to increase small business participation in the federal procurement market. The purchasing activities of the Federal Government present to small businesses a market that is highly diverse, and which annually provides millions of contracting opportunities worth billions of dollars. In fiscal year 1983, the Federal Government spent $168 billion through 21 million separate procurement actions. Ninety-eight percent of these contract actions were less than $25,000 in value, so-called "small purchases," which nonetheless totalled $16 billion. The federal procurement market encompasses a complete spectrum of products, construction, and services, including substantial research and development [R&D].

The Committee firmly believes that America's small businesses have the ability to effectively compete in major segments of the federal procurement market, if given a fair chance. Their participation can bring healthy new competition to the process, resulting in lower prices to the government and increased economic strength to the small business foundation of the nation's economy.

During the last four years, the share of federal procurement dollars awarded directly to small business concerns has fluctuated between 15.2 percent in fiscal year 1980 and 17 percent in fiscal year 1983. While this decrease can in some measure be explained by the large number of major system contracts being awarded by the Department of Defense, both for research and development and for production, the Committee believes that some of the decrease can be ascribed to the obstacles to participation in the federal market faced by small business concerns. During the 98th Congress, the Committee focused on identifying and eliminating the most persistent and damaging obstacles, including: (1) the absence of timely notices of contracting opportunities containing sufficient information to permit a small business contractor to make an informed business judgement; (2) the unregulated application of an array of prequalification requirements that foreclosed the participation of new competitors, no matter how capable, and most frequently leaving the government in a sole source contract relationship with the incumbent contractor; and (3) the absence of compelete, current, and unrestricted technical data readily available to the procuring activity to permit the preparation of a purchase description for a competitive procurement.

SMALL BUSINESS ACCESS TO FEDERAL PROCUREMENT INFORMATION

During the 98th Congress, the Committee continued to press for legislation to improve the timeliness and completeness of notices of contracting opportunities published in the Commerce Business Daily [CBD], (formally, the "United States Department of Com-

merce Synopsis of United States Government Proposed Procurements, Sales and Contract Awards"). Without substantial improvement in the Commerce Business Daily, most small business concerns dependent upon the CBD as their principal source of information concerning federal contracting opportunities are likely to continue to find it very difficult to compete effectively in the federal procurement market.

On December 11, 1981, Senators Weicker, Nunn, Boschwitz, D'Amato, Dixon, Gorton, Hayakawa, Rudman, and Tsongas introduced S. 1947, a bill to amend Section 8(e) of the Small Business Act. Two hearings on S. 1947 were conducted. The first was a field hearing held on February 17, 1982, conducted by the Subcommittee on Advocacy and the Future of Small Business, chaired by Senator S.I. Hayakawa. The second hearing was conducted by the full Committee on March 4, 1982 chaired by Senator Weicker. On May 13, 1982, the Committee marked-up and ordered S. 1947 reported as amended. On May 27, 1982, the Senate passed S. 1947 by voice vote. The 97th Congress adjourned before any action was taken by the House.

With the convening of the 98th Congress, Senator Larry Pressler introduced a new bill, S. 272, to amend Section 8(e) of the Small Business Act to improve small business access to federal procurement information, which was almost identical to S. 1947. He was joined by Senators Weicker, Nunn, D'Amato, Gorton, Rudman, Dixon, Levin, Hawkins, Specter, Huddleston, Sasser, Tsongas, Glenn and Hatch. On February 2, 1983, Senator Pressler chaired a legislative hearing by the full Committee on S. 272. As with the hearings during the 97th Congress on S. 1947, witnesses representing small business government contractors were uniformly in favor of the passage of S. 272. The Administration opposed S. 272, as it had S. 1947, maintaining that management emphasis on compliance with existing regulatory requirements was all that was needed to address the problems identified to the Committee by small business government contractors.

Following the hearing, the Committee met in Executive Session to consider S. 272. After adopting an amendment offered by Senator Boschwitz, the Committee unanimously ordered S. 272 favorably reported without written report. However, Senator Pressler inserted an explanation of S. 272 and its legislative history in the Congressional Record of February 2, 1983, pages S884–S889.

On February 3, 1983, S. 272 was considered by the Senate. Senator Cohen offered an amendment, cosponsored by Senators Weicker, Nunn, Levin, and Pressler, which made several modifications to reconcile the CBD notice provisions of S. 272, and those in S. 338, the Competition in Contracting Act of 1983, which would place CBD notice requirements in both the Armed Services Procurement Act of 1947 (10 U.S.C. s2301, et seq.), and the Federal Property and Administrative Services Act of 1949 (41 U.S.C. s251, et seq.). Conforming amendments were made to S. 338 when it was marked-up by the Committee on Governmental Affairs. These actions were taken so that procuring agencies would not be forced to comply with dissimilar or possibly conflicting requirements in the Small Business Act, which would apply to all procuring agencies

government-wide. Following acceptance of the Cohen amendment, S. 272 was passed by the Senate by voice vote.

A companion bill to S. 272 was introduced in the House as H.R. 1043 on January 27, 1983 by Representative Parren J. Mitchell, Chairman of the House Small Business Committee, referred to the House Committee on Small Business, and marked-up and ordered reported on February 3. On February 15, H.R. 1043 was called up for House action under Suspension of Rules and passed on a roll call vote, 294–32.

March 8, 1983, the House considered S. 272, passing a House amendment by unanimous consent. The House insisted upon its amendments, requested a conference, and appointed conferees the same day. On March 11, the Senate agreed to the House request for a conference and appointed conferees.

Following extensive staff work, the conferees met and agreed to a conference report on June 22, 1983. The following day, the conference report (H. Rept. 98–263) was filed in the House. On June 27, the Senate agreed to the conference report by a voice vote. On August 1, the House agreed to the conference report by unanimous consent. S. 272 was signed by the President on August 11, 1983, and became Public Law 98–72.

SMALL BUSINESS PROCUREMENT REFORM ACT

On May 25, 1983, Senator Arien Specter, R-Pa., introduced the Small Business Procurement Reform Act of 1983, S. 1355. This bill was the successor to similar legislation he introduced during the 97th Congress, S. 2446. Briefly, S. 1355 sought to obtain four goals which its sponsor believed would have increased small business participation in the federal procurement process.

First, the bill sought to further refine the Commerce Business Daily notice requirements required by S. 272, including publication of justification for sole source contract awards or geographic limitations on the acceptability of offers from perspective contractors and of notice of all contract awards to small business made under "set-asides" authorized by section 15 of the Small Business Act. A requirement for the publication of a notice of an intended sole source contract award as well as a requirement to invite competing proposals and evaluate them was added to S. 272 by Senator Levin during Committee mark-up.

Second, S. 1355 called for the procuring agencies to plan their acquisition for spare parts or services needed to maintain large systems to "take all steps so as not to preclude performance by small and small disadvantaged concerns as prime contractors, where practicable." The concept of this provision was included in many of the provisions of S. 2489, the Small Business Competition Enhancement Act of 1984, which is discussed later in this Chapter.

Third, S. 1355 would have authorized the SBA Administrator to establish government contract arbitration panels to resolve both "bid protest" and "contract performance" disputes between a small business and a federal agency. Use of the arbitration panels would be voluntary. Similarly, the resulting decision would be binding only to the extent agreed upon by the parties. A similar provision in S. 2446 had been discussed during Committee hearings during

the 97th Congress, but gained little support. A comprehensive system for the resolution of "contract performance" disputes has already been established by the Contractor Dispute Act of 1978, Public Law 95-563 (41 U.S.C. s601, et seq.), which provides for a simplified and expedited "small claims procedure" (41 U.S.C. s608) where the amount in dispute is $10,000 or less. With respect to "bid protests", the Competition in Contracting Act of 1984, Public Law 98-369, includes provisions which substantially strengthen the likelihood that a small business will obtain a meaningful remedy if its protest is sustained. Public Law 98-369 significantly strengthens the existing bid protest forum before the General Accounting Office and establishes a test of a new bid protest forum before the General Services Administration Board of Contract Appeals for ADP (automatic data processing) contracts subject to Section III of the Federal Property and Administrative Services Act of 1949, Public Law 89-306, the so-called Brooks ADP Procurement Act. In light of these existing remedies, the creation of an additional, non-mandatory, and non-biding disputes resolution forum such as the proposed SBA sponsored contract arbitration panels failed to gain additional support during the 98th Congress.

Finally, S. 1355 would have established a Small Business Procurement Advisory Committee to advise the Congress and the SBA Administrator "on matters relating to government procurement contracts awarded to, or set aside for, small business concerns." The concept of such a legislatively-mandated advisory body did not receive strong support during committee hearings on S. 2446 during the 97th Congress. No additional support surfaced during the 98th Congress to include written comments or oral testimony during the Committee's series of four field hearings on "Obstacles Faced by Small Business in Federal Procurement," which are described in detail later in this Chapter.

No hearings were scheduled by the Committee specifically to receive testimony on S. 1355. However, many of its basic goals were attained in subsequent legislation reported by the Committee, enacted by the Congress and signed by the President, including Public Law 98-577, the "Small Business and Federal Procurement Competition Enhancement Act of 1984"; Title XII of Public Law 98-525, the "Defense Procurement Reform Act of 1984", and Public Law 98-369, the "Competition in Contracting Act of 1984".

Small Business and Federal Procurement Competition Enhancement Act of 1984 and the Defense Procurement Reform Act of 1984

SMALL BUSINESS COMPETITION IN CONTRACTING ACT OF 1983

On August 3, 1983, Senator Alan Dixon, joined by 18 Cosponsors, introduced the "Small Business Competition in Contracting Act of 1983", S. 1730. This bill sought to attack many of the obstacles to small business participation in the Federal procurement market. Many tooling and machining companies were finding it virtually impossible to break-into the Defense Department market for "spare" or replacement parts, a largely sole source contract market, due to an array of regulatory obstacles as well as the pro-

curing agencies' lack of technical data suitable for reprocurement purpsoses.

Given the sustained public and Congresssional attention on the Department of Defense's procurement activities, especially for "spare parts," the number of cosponsors for S. 1730 grew steadily, reaching a total of 32 on February 27, 1984.

Upon close scrutiny, however, the procurement reforms offered by S. 1730 were proving to be not as workable as they originally appeared. Adverse comments were received from many quarters of industry. Agency comments suggested that many of the bill's provisions were unacceptable, because they could result in potentially costly side-effects that might be worse than the problems the bill sought to solve. Given these problems, Senator Dixon joined Chairman Weicker in an effort to prepare a "second generation" bill. S. 1730 was important because it focused attention on the persistent obstacles to small business participation in the Federal procurement market.

FIELD HEARINGS: "OBSTACLES FACED BY SMALL BUSINESS IN FEDERAL PROCUREMENT"

As part of the overall efforts to develop a successor to S. 1730, the Committee conducted a series of four field hearings during the months of October, November, and December 1983, and January 1984. The series, entitled "Obstacles Faced by Small Business in Federal Procurement," sought to draw upon the firsthand experiences of actual or prospective small business government contractors.

The first field hearing was held by Senator Sasser in Nashville, Tenn., on October 17, 1983. Senator Sasser said:

> It is my hope today to focus attention on some of the problems in the procurement procedure, problems that represent obstacles to small business participation in the Federal procurement contracts.
>
> The testimony that we will hear today will reflect firsthand experience on the workings of the procurement system. Through recounting these experiences, your experiences, and presenting your comments on policy, we can get some insights on improving the systems of Federal procurement, improving the system down where the rubber meets the road, where the contracts are made and where the products are produced.

Testimony was presented by nine witnesses, representing diverse segments of Tennessee's small business community, many of which market supply items, research and development, and other specialized services to agencies of the Federal Government.

The Small Business Administration was represented by the Nashville District Director, accompanied by T.C. Hollingsworth, the SBA Breakout Procurement Center Representative (BPCR) at Warner-Robins Air Logistics Center. Mr. Hollingsworth presented the purposes and accomplishments of SBACs pilot BPCR Program.

The second field hearing was scheduled by Senator Kasten to be held in Madison on November 11, 1983. Due to an all-night Senate

session, Senator Kasten was unable to attend, and the session was conducted as a Committee staff meeting instead of a hearing. Following an opening statement delivered from Washington by Senator Kasten via a speakerphone, oral statements were received from four witnesses representing the small business community and by Richard Durkin, SBA's Regional Administrator for Region V.

In his opening statement, Senator Kasten stated that he did not seek to merely find a particular party to blame for recent stories of Pentagon cost overruns:

> * * * but I am convinced that this could not have happened if small businesses had competed for those spare parts contracts. * * * It is small business that can bring us that kind of competition, if small business can simply get into the act.
>
> I, therefore, believe that we need a revamping of the federal purchasing system. * * * We also need a partnership between small business and the Federal Government to drive down the cost of items that the Federal Government needs. If we allow greater competition for Government contracts, I think we would see not only better products for the Government, but also more business for small firms. * * *

A major theme of the hearing was the beneficial role which small business is capable of playing in the federal procurement market. It was summed up quite effectively by William M. Koutnik, Vice President of National Manufacturing Company of Milwaukee, who said:

> Give us the opportunity as small businesses to assist the DoD in reducing the excessive spending due to sole-source procurement. We have the capacity, the work force, and the expertise to substantially reduce the embarrassing media reports to incredible waste and overcharging. If we wish to obtain public support for a strong defense program, we must convince the populace that their tax dollar is being spent wisely and they are obtaining the best product for the least price.

The third field hearing was held by Senator Dixon in Chicago on December 7, 1983. Testimony was received from two small business concerns who recounted their first-hand experiences in trying to compete for "spare parts" contracts. Representatives of the Northrop Corporation, SBA's Region V Administrator and the Director of the Illinois Department of Commerce and Community Affairs also spoke concerning their respective efforts to assist small business concerns in competing for government contracts awarded by federal, state, and local government agencies. Insights from the perspective of the government procurement professional were provided by the Chief of the Weapons Division, Directorate of Procurement and Production, U.S. Army Armaments, Munitions and Chemical Command at Rock Island Arsenal.

The final field hearing in the series was held by Senator Nickles in Oklahoma City on January 17, 1984. Testimony was received from representatives of three small Oklahoma machine tool firms

which recounted their difficulties in breaking into the "spare parts" market and the additional problems confronted due to the government's complex contract administration procedures. A successful small business contractor from Ohio described his dealings with Oklahoma City Air Logistics Center (ALC) and the other ALCs that are part of the Air Force Logistics Command (AFLC). He went on to describe how his business was being threatened with extinction due to a simple change in the way AFLC's procurement centers were beginning to define their requirements.

The SBA's BPCR stationed at Oklahoma City Air Logistics Center presented the accomplishments of this highly successful pilot program, sharing with the Committee specific examples of aircraft components "broken-out" from sole source contract award to the original major system contractor and the very substantial dollar savings realized. Next, AFLC's Deputy Chief of Staff for Contracting and Manufacturing led an Air Force panel that included AFLC's Command Competition Advocate and the Competition Advocate and Small and Disadvantaged Business Utilization Office Director from Oklahoma City Air Logistics Center. They recounted the substantial efforts being made by the Defense Department, the Air Force, the Air Force Logistics Command, and the Oklahoma Air Logistics Center to stop the sole source procurement of overpriced spare parts, increase the number of competitive procurements, eliminate the obstacles to competitive procurements (especially the lack of technical data suitable for reprocurement purposes), and expand small business participation in the federal procurement market.

The Committee also heard from representatives from two small Oklahoma architect-engineers (A-E) firms about the adverse effects that SBA size standards for A-Es. They further noted that the combination of the SBA size standard on which 97 percent of all A-E firms are considered small and the "set-aside" of virtually all A-E contracts for "small business" means that there is no effective "set-aside" for A-E contracts. Neal A. McCaleb testified:

> The current size standard of $1.5 million in average gross annual receipts equals to an A-E firm with about 118 employees. I can assure you that that is no small business for an architectural-engineering firm. My firm varies from 5 employees to 25 employees. Right now we are at the five-person level. An 118-person firm is an extremely large firm.
>
> * * * Nationally the statistics are that more than 80 percent of all A&E firms have less than 25 employees.

To arrive at such a definition of a "small" A-E firm would require an SBA size standard of $1.5 million in average gross annual receipts.

Finally, testimony was received from the Corporate Small Business Director for Northrop Corporation, who discussed the efforts of a major corporation to breakout replacement parts, to expand subcontracting opportunities for small business, and addressed the proprietary technical data issue. Substantial written testimony was also submitted critiquing S. 1730.

STAFF STUDY

The Defense Department's much publicized problems with the procurement of spare parts generated a wealth of materials which analyzed, in effect, major segments of Defense procurement procedures, while reviewing the "spare parts" problem. Numerous congressional hearings were held. Reviews and audits were conducted by the General Accounting Office and the Office of the DoD Inspector General (IG). Studies were made and reports with remedial recommendations were prepared by each of the military services and the Defense Logistics Agency. Building upon the work of the DoD IG and military services, remedial programs were devised and promulgated by the Office of the Secretary of Defense [OSD]. The Committee's staff conducted a careful analysis of this extensive record over a period of five-months. The provisions of what became the Small Business Competition Enhancement Act of 1984, S. 2489, are derived from or based upon this record, particularly the analyses and recommendations of the military services.

The Committee's staff study included a review of the following:

I. Department of Defense Report on Spare Parts (Listed Alphabetically by Author)

Air Force Management Analysis Group. *Spare Parts Acquisition,* U.S. Air Force; October 1983; 2 vols.

Army Material Development and Readiness Command. *Final Report: (Sprint):* U.S. Army; undated.

Army Material development and Readiness Command. *Spare Parts Review Initiatives (SPRINT);* U.S. Army; November 29, 1983; 75 pp.

The Department of the Air Force. *Corona Require: An Analysis of the Aircraft Replenishment Spares Acquisition Process (The Slay Study);* March 1983.

Defense Logistics Agency. *Overall DLA Efforts Concerning Spare Parts Acquisition;* October 1, 1983; 12 pp.

Department of Defense. *Report to the Congress on Acquisition and Management of Spare Parts Pursuant to section 1216(b) of the Omnibus Defense Authorization Act of 1983;* December 9, 1983; 2 pp. (14 tabs).

Naval Supply Systems Command. *Buy Our Spares Smart (BOSS): Synopsis of Initiatives;* U.S. Navy; November 23, 1983.

President's Private Sector Survey on Cost Control *Report on Procurement/Contracts/Investory Management;* August 31, 1983; 147 pp.

II. DOD Inspector General Reports (Listed Alphabetically by Title)

"Management of Technical data and Its Use in Competitive Procurement," April 11, 1983; Report No. 83-098; (80 pp).

"Procurement of Aircraft Engine Spare Parts," February 10, 1984; Report No. 84-044; (80 pp).

"Report on the Review of Audits and Other Evaluations of Major Subcontractors' Pricing Proposals," February 22, 1984; Report No. APO 84-3.

III. Selected Policy Directives Issues by DOD (Listed Alphabetically by Type of Document, and by Number)

Defense Acquisition Regulation, Supplement No. 6, "DOD Replenishments Parts Breakout Program," June 1, 1983.

DOD Directive 4120.3, "Defense Standardization and Specification Program," February 10, 1979.

Wade, James P. "Spare Parts Acquisition—ACTION MEMORANDUM," (memorandum to Service Secretaries); November 10, 1983.

Weinberger, Caspar, "Spare Parts Procurement," (memorandum to Service Secretaries et al.); July 25, 1983.

Weinberger, Caspar. "Spare Parts Acquisition," (memorandum to Service Secretaries et al.); August 29, 1983.

IV. General Accounting Office Reports (Listed by Date of Issue)

Noncompetitive Procurement of Aeronautical Replacement Spare Parts; September 18, 1961; (Letter Report: B–133396).

Follow Up Review of Noncompetitive Procurement of Aeronautical Spare Parts in the Development of the Air Force, June 28, 1963; (B–133396).

Noncompetitive Procurement of Aeronautical Replacement Spare Parts Within the Army; June 28, 1963; (Letter Report: B–133396).

Defense-Wide Survey of the Procurement of Aeronautical Spare Parts; June 25, 1968; (Letter Report: B–133396).

System for Buying Spare Parts for Initial Support of New Military Aircraft Needs Substantial Improvements; January 31, 1972; (B–133396).

Procurement Procedures Used by the Ships Parts Control Center; April 3, 1980; PSAD 80–38.

Noncompetitive Procurement of Aeronautical Spare Parts at the Oklahoma City Air Logistics Center; October 31, 1980; (Letter Report: B–200136).

SBA's Breakout Efforts Increase Competitive Procurements at Air Logistics Centers; August 2, 1982; (Letter Report: PLRD 82–104).

Air Force Breakout Efforts Are Ineffective; June 1, 1983; PLRD 83–82.

V. Selected Industry Studies (Listed Alphabetically by Author)

Council of Defense and Space Industry Associations (CODSIA); October 21, 1983; *Letter to Deputy Secretary Paul Thayer.*

Council of Defense and Space Industry Associations (CODSIA); November 1, 1982; *Letter to William Long on DAR Supplement 6.*

Hardman, William. *Letter to Verne Orr;* National Tooling and Machining Association; February 8, 1984.

VI. Congressional Inquiries

Committee Hearings

Senate Committee on Appropriations. *Hearings on DOD Appropriations for 1984: Contracting Policies and Procedures;* February 1, 1983; 81 pp.

House Committee on Government Operations. *Management of DOD's High Dollar Spare Parts Breakout Program;* April 19, 1983; 153 pp.

Senate Committee on Appropriations. *Hearings on DOD Appropriations for 1984; Spare Parts Management and Pricing Policy;* August 4, 1983; 103 pp.

House Committee on Small Business. *Hearings on Competition in Federal Procurement;* October 5, 1983; Vol. I, 243 pp.

House Committee on Small Business. *Hearings on Competition in Federal Procurement;* October 6, 1983; Vol. II, 224 pp.

Senate Committee on Armed Services. *Spare Parts Procurement for the Department of Defense;* October 26–27, 1983; 28 pp.

Senate Committee on Governmental Affairs. *Purchasing of Spare Parts and Support Equipment in the Department of Defense;* November 2, 1983.

Committee Reports

House Committee on Government Operations. *Failure to Implement Effectively the Defense Department's High Dollar Spare Parts Breakout Program is Costly;* November 9, 1983; Hoiuse Report No. 98–512, 16 pp.

House Committee on Small Business. *Small Business Breakouts;* November 10, 1983; House Report No. 98–528, 10 pp.

House Committee on Small Business. *Small Business Competition for Federal Procurements;* November 12, 1983; House Report No. 98–541, 45 pp.

S. 2489, SMALL BUSINESS COMPETITION ENHANCEMENT ACT OF 1984

After the preparation of the initial draft of the proposed bill on February 28, 1984, the Committee staff conducted a month-long series of discussions with industry and government procurement professionals to obtain comment and suggestions for improvement. Two discussion drafts of the proposed bill were prepared and circulated. Face-to-face discussions were held with associations representing large business as well as small business, including the Aerospace Industry Association, the Computer and Business Equipment Manufacturers Association, the National Federation of Independent Business, the National Security Industrial Association, the National Tooling and Machining Association, Small Business United, and the U.S. Chamber of Commerce's special task force combining the interests of its Procurement Policy Committee and its Small Business Council. Comments were sought from the staff of Business Executives for National Security [BENS], leaders of the American Bar Association Section of Public Contract Law, two former administrators of the Office of Federal Procurement Policy, and the former General Counsel to the Commission on Government Procurement.

Within government, informal discussions were held with senior procurement professionals within OSD, Office of the Secretary of the Air Force, and NASA. Suggestions were also sought from the SBA and the SBA's Chief Counsel for Advocacy. Special assistance was provided by the staff of GAO, the Office of the DoD Inspector General, and the Office of Federal Procurement Policy [OFPP].

In drafting the legislation, special care was taken to make its provisions comport with S. 338, the Competition in Contracting Act of 1983, which passed the Senate on November 16, 1983 and was under active consideration by the House Committees on Armed Services and Government Operations. S. 338 sought to establish a new statutory framework for procurement by all federal agencies, with a special emphasis on competitive procedures at all dollar levels. It placed stringent limitations on when an agency may restrict competition or enter into a sole source contract. It also mandated the establishment of "competition advocates" and specified their authorities and responsibilities. Thus, S. 338 provided a fundamental statutory foundation upon which the Small Business Competition Enhancement Act would build.

DEFENSE SPARE PARTS PROCUREMENT REFORM ACT

On March 7, 1984, Representative Bill Nichols, D-Ala., Chairman of the Subcommittee on Investigations, House Armed Services Committee, introduced H.R. 5064, the Defense Spare Parts Procurement Reform Act. This legislation was that Committee's effort to institutionalize important improvements in DoD's procurement practices to prevent a recurrence of the "spare parts problem". Like the Small Business Competition Enhancement Act of 1984, which was subsequently introduced, H.R. 5064 was grounded in the extensive analytical record and the recommendations of OSD, the DoD IG, and the military services. Close liaison was maintained between the Senate Small Business Committee staff, and the staff to the Subcommittee on Investigations of the House Armed Services Committee.

On April 3, 1984, H.R. 5064 was unanimously approved with an amendment in the nature of a substitute, and subsequently reported on April 18th by the House Committee on Armed Services. On April 12, 1984, Senator Levin, Ranking Minority Member of both the Small Business Committee's Government Procurement Subcommittee and the Armed Services Committee's Task Force on Selected Defense Spare Parts Procurement Improvement Act of 1984, which he sponsored, and S. 2572, the Senate version of H.R. 5064 as reported, to stimulate discussion and subsequent legislative action by the Committee on Armed Services.

On March 29, 1984, Chairman Weicker introduced S. 2489, the Small Business Competition Enhancement Act of 1984, with strong bipartisan support, lead by Senator Dixon. In all there were 22 original cosponsors, including Senators Dixon, Kasten, Rudman, Nickles, Sasser, Nunn, Danforth, Chiles, D'Amato, Moynihan, Hatch, Pryor, Abdnor, Baucus, Boren, Huddleston, Hecht, Ford, Heflin, Leahy, Pell, and Sarbanes. Many had been cosponsors of S. 1730, and heeded Senator Dixon's call to join him in supporting S. 2489.

Chairman Weicker captured the essence of what the bill was seeking to accomplish when he said:

> The executive and legislative analyses of the "spare parts problem" have confirmed that adequate competition is lacking, due to poor procurement planning and a myriad of obstacles to impede the entry of new competitors to the

federal marketplace, especially small business competitors. Such obstacles result not only in the increased likelihood of higher prices for items procured by federal agencies, but also contributes to the decline of the nation's defense industrial base, which has been a major concern to the Department of Defense and to the Congress.

Senator Nickles, Chairman of the Government Procurement Subcommittee, added:

> Far too much of our federal procurement is done on a sole-source basis. The major emphasis of this legislation is to broaden the base of qualified contractors and place more of our federal contracts into open competition.
>
> When we are faced with such monstrous deficits we need to take a hard look at the way we do business. With nearly one-fifth of the federal budget is devoted to procurement, major savings can be achieved through proper management of this part of federal spending.

BREAKOUT PROCUREMENT CENTER REPRESENTATIVES

On March 15, 1984, Senator Boschwitz introduced S. 2434, a bill to amend Section 15 of the Small Business Act to provide for the assignment of Breakout Procurement Center Representatives to major federal procurement centers, those procuring over $150 million of other than commercial item spare parts. The bill provided a permanent statutory basis for a pilot program established by SBA in 1979, which has been highly successful in increasing the opportunities for competitive procurements available to small business and has resulted in substantial savings to the Defense Department.

The primary function of the BPCR is to identify items being procured on a sole source basis, to identify and overcome the obstacles which are preventing the competitive procurement of the item, to "break-out" the item for competition, whenever possible, and to encourage small business concerns to participate in future competitive procurements for the items that have been "broken-out."

In August 1982, the GAO issued an analytical report to the House of Representatives on the program and the savings being reported by the Small Business Administration, which was entitled "SBA's Breakout Efforts Increase Competitive Procurements at Air Logistics Centers" (GAO Report No. PLRD–82–104). The GAO found that the pilot program was attaining impressive savings by encouraging competition. The report stated:

> SBA's breakout efforts have resulted in large dollar savings in relation to the program costs * * *
>
> During the initial eighteen months of the BPCR Program, the four BPCRs were able to break-out to competition 294 items that had previously been procured on a sole source basis, and the Government realized savings of $7,319,913, the difference between the last sole source price and the first competitive price.

The GAO also noted that due to limitations on the time available for recordkeeping, as opposed to actively breaking-out items for

competition, the BPCRs were "unable to calculate savings on subsequent purchases of items already broken out."

For fiscal year 1983, SBA reported that the BPCRs assigned to four of the five Air Logistics Centers operated by Air Force Logistics Command were able to break-out for competition 1,634 parts, resulting in savings estimated at almost $36 million. In fiscal year 1985, SBA will have 14 BPCRs in operation at all five ALCs as well as procurement centers operated by the Army, Navy, and the Defense Logistics Agency.

S 2434 was the Senate companion to H.R. 4209, introduced by Rep. Barbara Boxer on October 25, 1983, which was favorably reported (H. Rpt. 98-528) by the House Small Business Committee on November 10, 1983. H.R. 4209 was passed by the House of Representatives on May 21, 1984. Section 8 of S. 2489 was derived from H.R. 4209 and S. 2434.

At Chairman Weicker's request, H.R. 4209 was held at the desk and placed on the Senate calendar, rather than be referred to Committee. Later, H.R. 4209 became the legislative vehicle which made possible the passage of the Small Business and Federal Procurement Competition Enhancement Act of 1984 in the final days of the 98th Congress.

HEARINGS AND COMMITTEE ACTION

S. 2489 was referred to the Committee. Two days of legislative hearings were promptly scheduled for early April to receive testimony on S. 2489 and S. 2434, which had also been referred to the Committee.

The first day of hearings was conducted on April 6, 1984. Testimony was received from James C. Sanders, SBA Administrator, accompanied by Frank C. Miller, SBA's Breakout Procurement Center Representative at Oklahoma City Air Logistics Center. Mr. Miller presented to the Committee six actual examples of spare parts that had been "broken-out" from sole source procurement and the substantial savings generated.

The next witness was Derek J. Vander Schaaf, the Deputy Inspector General for the Department of Defense. Mr. Vander Schaaf shared his analyses of the proposed legislation in light of the very substantial investigative and analytical work done by the DOD IG with respect to various facets of the Defense Department's "spare parts problem." In his written statement, Mr. Vander Schaaf emphasized:

> We must ensure that the corrective measures that have already been identified are institutionalized. Otherwise, based on past history, we are likely to see backsliding and the cycle repeat itself in five years or so. It is in this institutionalizing process where new well-thought-out legislationalizing process where new well-thought-out legislation can be most effective.

After relating various audit findings and recommendations of the DOD IG to the provisions of S. 2489 and S. 2434, Mr. Vander Schaaf concluded his written statement by saying:

> Both S. 2489 and S. 2434 address problems we have found to be associated with contracting for spare parts. * * * On balance, I believe that S. 2489 serves a need and, if properly administered, will prove to be a significant enhancement to our efforts to broaden the defense procurement base, increase competition, improve our efficiency and reduce costs.

Testimony was next received from the GAO, represented by Paul Math, Associate Director of GAO's National Security and International Affairs Division [NSIAD], accompanied by Sidney Wolin, a Group Director within NSIAD, and John Brosnan from GAO's Office of General Counsel.

Mr. Math reviewed for the Committee the parameters of the Defense Department's spare parts problem as revealed by GAO's own reports and its review of analyses conducted by the military services, most notably the report of the Air Force Management Analysis Group [AFMAG]. In relating the identified problems in the procurement process to the solutions proposed in S. 2489, the GAO concluded that:

> S. 2489 proposes many important changes to address these and other problems that inhibit competition, reduce the opportunities for greater small business participation in meeting government needs, and generally caused spare parts to be acquired at higher prices. It also provides for needed flexibility as long as adequate justification can be provided for deviating from requirements.

The final witness on the first day was Richard Ludwig, President of Lavelle Aircraft Company, who was representing NFIB, and was accompanied by NFIB's Associate Director of Research, Sally L. Douglas. Mr. Ludwig, a small business owner whose company manufactured precision parts for the aerospace industry, recounted some of his personal experiences concerning the problems of marketing to the Federal Government. After reviewing these various obstacles for the Committee, he related them to the provisions of S. 2489. In expressing NFIB's strong support for S. 2489, Mr. Ludwig said:

> S. 2489 is a practical, sensible approach to reform of the procurement system. Rather than superimposing requirements on the system—which is rather like treating the symptoms and ignoring the disease—S. 2489 builds requirements for competition within the system, starting with the procurement planning process. Many of the practices and procedures agencies have used to block small business participation are revised or eliminated by this bill.

The second day of legislative hearings on S. 2489 and S. 2434 was conducted on April 12, 1984. The Committee received testimony from representatives of the Defense Department, National Aeronautics and Space Administration [NASA] and the Department of Transportation as well as an array of industry representatives ranging from the U.S. Chamber of Commerce to the National Secu-

rity Industrial Association and to the National Small Business Government Contractors Association.

The day's first panel of government witnesses was led by Harvey J. Gordon, Assistant Deputy Under Secretary of Defense for Aquisition. After recounting the Defense Department's Acquisition Improvement Program and the special efforts being made to address the shortcoming that created the spare parts problem, he urged the Committee to give the Department's management initiatives and regulatory changes an opportunity to work. He also emphasized that if legislative change was deemed necessary, the new Congressional policy direction should be incorporated into the Armed Services Procurement Act of 1947. He also offered testimony concerning specific provisions of the bills, noting provisions that the Department considered unworkable or overly burdensome. During testimony, it was brought out that many of the modifications to procurement practice and procedures required by S. 2489 are very similar to changes being implemented by the Department or recommended by one or more of the military services after reviewing their spare parts procurement activities.

Testimony was next received from Stuart J. Evans, NASA's Assistant Administrator for Procurement. The focus of Mr. Evans' testimony was the inapplicability of most of the provisions of S. 2489 to NASA procurement. His substantial written statement also included a detailed analysis of the provisions of S. 2489. That analysis essentially found overly burdensome or adverse those few provisions of S. 2489 which would have applied to NASA procurement activities.

The final witness on the first panel was Barnett M. Anceleitz, Director of Installations and Logistics for the Department of Transportation [DOT], and the Department's Procurement Executive. In inviting testimony from DOT, it was the Committee's intention to obtain the views for a civilian agency subject to the basic procurement statute governing almost all civilian agencies, Title III of the Federal Property and Administrative Service Act of 1949. Mr. Anceleitz's fundamental message was that most of the beneficial changes mandated by S. 2489 should be attained through regulatory change rather than legislative direction. He went on to express his specific concerns about several provisions of the two bills, but supported the thrust of many others. He concluded his statement by saying:

> With the exceptions noted, I believe that S. 2489 and S. 2434 address many problems associated with procurement. I want to reiterate my belief, however, that most of the problems that these bills are intended to address can be dealt with administratively.

Next, the Committee received testimony from Frank Swain, Chief Counsel for Advocacy at SBA. The Office of the Chief Counsel for Advocacy has been especially active in trying to facilitate increased participation by small business concerns in the federal procurement market. Mr. Swain testified strongly in favor of S. 2489 and S. 2434, noting how the major provisions of these bills would result in a more competitive federal procurement system in which

small business concerns would have a better chance to effectively compete for federal contracts.

The Committee also received testimony from a panel of witnesses representing the business community. The first witness was Jeffrey H. Joseph, Vice President for Domestic Policy of the United States Chamber of Commerce, accompanied by Ellen B. Brown, staff member of the Chamber's Procurement Policy Committee, and Jeanne L. Morin, staff to the Chamber's Small Business Council. Mr. Joseph expressed the Chamber's support for S. 2489, noting suggested modifications to a few provisions. Special note was made of the substantial efforts made by the Chamber to reconcile the initial positions of its Procurement Policy Committee and its Small Business Council, through the creation of the joint working group which worked closely and cooperatively with the Committee staff to shape the bill's balanced proposals.

Testimony was next received from Wilsie H. Adams, Jr., on behalf of the National Security Industrial Association [NSIA] and A. G. Biddle, President of the Computer and Communications Industry Association [CCIA]. Both of these witnesses shared with the Committee their concerns about the potential adverse effects on legitimate proprietary interests in technical data which might flow from certain of the provisions of S. 2489. Members of the Committee were particularly attentive to the points raised by the witnesses for NSIA and CCIA and explored alternatives to address their concerns. The technical data provisions of S. 2489 also generated substantial written comments from other involved industry associations. Both Senators Weicker and Dixon both made it clear that it was not their intent to impair legitimate proprietary interests in technical data and directed the staff to work closely with the representatives of interested associations to protect such interests without sacrificing the fundamental goals of the provisions at issue.

The hearing concluded with another panel of witnesses representing small business concerns that had confronted most of the obstacles to participation in DoD's spare parts market. Their evaluation of the potential effectiveness of the provisions of S. 2489 was offered from the basis of their real world experiences or those of their member companies.

Tesimony was received from the National Tooling and Machining Association [NTMA], which was represented by Bruce N. Hahn, NTMA's Government Affairs Director. Mr. Hahn reviewed for the Committee the need for legislation given the experiences of NTMA members trying to break into DoD's spare parts market. He also shared with the Committee the findings of NTMA's study of DOD spare parts procurement practices, including the findings of a visit to Oklahoma City Air Logistics Center. In particular, he urged the Committee to make mandatory provisions of S. 2489 that were presently discretionary in an effort to maintain flexibility when he stated:

> We, therefore, suggest that this legislation be carefully reviewed during mark-up and that any "vessel" words be replaced with language that leaves no room for interpretation. If you direct DoD bureaucrats to "consider" certain factors, they will consider everything and do nothing. If

> you give them "authority" to take certain actions, they will choose not to exercise that authority. You can count on the fact that any section of the final measure that contains any room for discretion will be ineffectual. You might as well drop the provision because DoD procurement personnel do nothing.

The next small business witness was Mr. Charles W. Engfer, Vice President of Lynmar Sales and Treasurer of the National Small Business Government Contractors Association [NSBGCA]. Mr. Engfer also related the provisions of S. 2489 to actual obstacles to competition which NSBGCA members had encountered. He then shared with the Committee an example of the substantial price reductions that are possible if spare parts can be broken-out from sole source procurement from the major system manufacturer.

Finally, testimony was presented by Joseph J. Petrillo on behalf of the National Association of Aircraft and Communication Suppliers (NAACS) which strongly supported the enactment of S. 2489 and S. 2434. NAAC's statement called to the Committee's attention the need to closely monitor implementation of what are essentially statutorily mandated management reforms:

> The job will not be complete with the enactment of these bills. It will still be necessary for Congress and this Committee to maintain periodic oversight, in order to guarantee that the reforms established in this legislation are carried out fully and faithfully.

Following these two days of legislative hearings, proposed modifications to S. 2489 were developed to address many of the concerns expressed. A Committee print reflecting these proposed changes was prepared and circulated. On May 8, 1984, the Committee met and ordered S. 2489 favorably reported with amendments. Subsequently, on June 14, 1984, S. Rept. 98–523 was issued.

SEQUENTIAL REFERRAL TO THE COMMITTEE ON ARMED SERVICES AND ITS TASK FORCE ON SELECTED DEFENSE PROCUREMENT MATTERS

On May 11, 1984, S. 2489 was sequentially referred to the Committee on Armed Services, pursuant to a unanimous consent agreement which required action by June 8, 1984. Subsequently, the period was extended to June 11, 1984.

S. 2489 was assigned to the Armed Services Committee's Task Force on Selected Defense Procurement Matters. The Task Force, chaired by Senator Dan Quayle, R-IN., with Senator Levin, D-MI., as Ranking Minority Member, was established to create a forum within the Armed Services Committee to review legislation affecting key facets of the process of federal procurement and their potential impact on the procurement activities of the Defense Department. S. 2489 was among the first major pieces of procurement legislation upon which the Task Force was called upon to act.

At the same time the Task Force was considering S. 2489, it was also considering two other significant pieces of procurement legislation designed to address the Defense Department's spare parts problem. S. 2571, the Department of Defense Spare Parts Procurement Improvement Act of 1984, introduced by Senator Levin on

April 12, 1984, provided an array of solutions to many of the factors identified as potential causes contributing to DoD's spare parts problem, including treatment of contractor's assertions of proprietary interests in technical data, identification of the actual manufacturer of a part, limitations on allowable costs in "pass-thru" situations, purchasing in economic order quantities, and other related provisions. At the same time he introduced S. 2571, Senator Levin introduced the Defense Spare Parts Procurement Reform Act, S. 2572, which reflected the text of H.R. 5064 as approved by the House Armed Services Committee on April 3, 1984 and reported on April 18, 1984. His purpose was to facilitate early consideration of this House Armed Services Committee bill.

The Task Force held a hearing on May 16, 1984 and received testimony on S. 2489, S. 2571, and S. 2572. Testimony was presented by Harvey J. Gordon, Assistant Deputy Under Secretary of Defense for Acquisition, accompanied by senior procurement policy managers from each of the military services and the Defense Logistics Agency as well as Herbert L. Fisher, Director for Contract Policy within the Office of the Secretary of Defense. Mr. Gordon's testimony followed the same basic outline and conveyed the same basic message as his testimony before the Small Business Committee, emphasizing that the Department's problems with the acquisition of spar parts were essentially management problems not requiring legislative solutions, but if Congressional policy direction were forthcoming it should be given as amendments to the Armed Services Procurment Act of 1947.

The Department of Defense witnesses were followed on the same panel by Frank Swain, Chief Counsel for Advocacy of SBA. Mr. Swain again testified strongly in favor of legislative action and in particular the approach offered in S. 2489, which in his view best attained the three fundamental elements needed to increase competition and the potential for small business participation in the federal procurement process, especially DoD's spare parts market. These three elements are: (1) reform of prequalification requirements applicable to bidders or their products, which serve as obstacles to participation in the procurement process, expecially by small businesses; (2) earlier planning for ways to enhance the potential for competitive acquisition of spare parts, support equipment and support services for major systems, preferably during the development phases and certainly prior to production including better management of technical data and procedures for validating a contractor's assertions of proprietary rights in technical data; and (3) a legislative basis for and expansion of SBA's pilot Breakout Procurement Center Representative (BPCR) Program.

Next, the Task Force received testimony from two industry witnesses especially concerned abut the provisions in each bill relating to rights in technical data. Wilsie H. Adams, Jr. represented the National Security Industrial Association [NSIA]. His testimony before the Task Froce was similar to that presented to the Small Business Committee on April 12, 1984. R. John Chapel of Sundstrand Corporation provided the perspective of an aerospace industry corporation that generally participated in the Defense procurement market as a first or second tier subcontractor and whose overall business was a 50/50 mix between government and private

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contracts. He sought to present to the Task Force the business environment in which such aerospace industry subcontractors and suppliers operate and relate the impact that the provisions of the proposed bills would have on these companies. Mr. Chapel was especially concerned about the provisions in S. 2571 and S. 2572 which limited the time in which a procuring agency would recognize a contractor's legitimate proprietary rights in technical data. He also felt that a legislative solution to the spare parts problem might be premature. Specifically, he said:

> I do not see, from a practical standpoint, where the various legislative proposals will cure the system's problems which led to this perception of the problem in the pricing of spare parts. * * * (W)e are afraid action is being taken before the perceived problem has been fully understood and addressed.

Finally, the Task Force received testimony from representatives of the NFIB and the Chamber of Commerce of the United States. Sally L. Douglas, Manager of Research presented NFIB's strong testimony in support of the provisions of S. 2489, carefully reviewing how they would eliminate obstacles to participation in the federal procurement process identified by small business concerns and otherwise facilitate the potential of small business concerns to effectively compete for federal contracting opportunities, especially within DoD's spare parts market.

Christopher T. Cross, Executive Vice President of University Research Corporation, testified on behalf of the U.S. Chamber of Commerce, expressed the Chamber's strong support for S. 2489, reviewing the major provisions of the bill and noting some suggestions for modification. In discussing the various provisions of the three bills relating to the technical data, the Chamber endorsed the approach taken by S. 2489, specifically opposing the "arbitrary and artificial time limits on data rights" contained in S. 2571 and S. 2572. The Chamber's statement also supported S. 2489's treatment of computer software and technical data related to commercial products, concluding: "(c)ompanies' rights to data relating to their commercial products should not be jeopardized merely because they may sell such products to the government."

On May 17, 1984, the Task Force marked-up S. 2489 and unanimously recommended to the full Committee that it be favorably reported with amendments, including a change in title to the Small Business and Federal Procurement Competition Enhancement Act of 1984. At the same time, the Task Force proposed a set of procurement reform provisions for incorporation in S. 2723, the Omnibus Defense Authorization Act, 1985. This proposal included major portions of S. 2489, as amended, as well as provisions from S. 2571 and S. 2572, modified to reflect the testimony received at the Task Force hearing. On May 22, 1984, the full Armed Services Committee adopted the recommendation of the Task Force, incorporating its set of proposed procurement reform provisions in S. 2723. On June 11, 1984, the full armed Services Committee adopted the recommendations of the Task Force regarding S. 2489, unanimously reporting it favorably with amendments.

On June 21, 1983, the Senate completed its floor consideration of S. 2723, passing it as the substitute text for H.R. 5167, which had been passed by the House on May 31, 1984. H.R. 5167, as passed by the House, included the text of H.R. 5064, the Defense Spare Parts Procurement Reform Act, as reported by House Armed Services Committee.

The conference on H.R. 5167 was begun on June 22nd but a conference report was not agreed to until September 25th, due to fundamental disagreements relating to the number of MX missiles to be authorized, overall funding levels, and other Defense program issues.

SMALL BUSINESS AND FEDERAL PROCUREMENT COMPETITION ENHANCEMENT ACT OF 1984

The amended version of S. 2489, now called the Small Business and Federal Procurement Competition Enhancement Act of 1984, which was reported by the Armed Services Committee on June 11th, was accepted by the Small Business Committee. Further action on S. 2489 was deferred during the pendantcy of the conference on the fiscal year 1985 DOD authorization bill, H.R. 5167, the Senate-version of which contained many provisions of the S. 2489, as reported by the Armed Services Committee.

S. 2489 was considered by the Senate on August 7, 1984, during which many floor amendments were offered. Most were procurement reform provisions which were part of the Senate version of H.R. 5167, which was stalled in conference. These floor amendments were accepted. With the completion of floor amendments to S. 2489, Chairman Weicker called up H.R. 4209, which was pending on the Senate's calendar, and moved the substitution of the amended text of S. 2489 for the text of H.R. 4209. H.R. 4209 was then passed by a vote of 94–0. A conference with the House was requested and Senate conferees were appointed.

Rather than appoint House conferees and go to conference, a decision was made to fashion a House substitute for the Senate amendment to H.R. 4209. Since the Senate-passed version of H.R. 4209 contained amendments to Title III of Federal Property and Administrative Services Act of 1949 and the Office of Federal Procurement Policy Act (Title 41 provisions) as well as the Armed Services Procurement Act of 1947 (Title 10 provisions) and the Small Business Act (Title 15 provisions), the negotiations relating to H.R. 4209 involved staff of the House Government Operations Committee and the Senate Governmental Affairs Committee as well as the House and Senate Armed Services and Small Business Committees.

With the resumption of the FY85 DOD authorization bill conference, discussions focused on the Title 10 provisions of H.R. 4209. Once a conference report on H.R. 5167 had been agreed to, the Title 10 provisions of H.R. 4209 were deleted. Negotiations continued and an agreement was reached regarding the text of the Title 15 and Title 41 provisions of a House substitute to the Senate-passed version of H.R. 4209.

On October 2, 1984, the House adopted the House substitute for the Senate-passed version of H.R. 4209 on a roll call vote of 416–0.

The Senate considered the House substitute and accepted it by unanimous consent on October 4th. H.R. 4209 was signed by the President on October 30, 1984, becoming Public Law 98-577.

THE DEFENSE PROCUREMENT REFORM ACT OF 1984

The conference report on H.R. 5167 (H. Rept. 98-1080), the Department of Defense Authorization Act, 1985 included extensive procurement reform provisions in Title XII, which were identified as the Defense Procurement Reform Act of 1984. The agreed upon text of Title XII of H.R. 5167 continued to reflect provisions that had their origin in S. 2489, due to the strong support of key members of the Senate Armed Services Committee Task Force on Selected Defense Procurement Matters, including Senators Quayle, Levin, Bingaman, and Dixon. Staff of the Senate Small Business Committee were invited to participate in the staff deliberations relating to those provisions of Title XII that had their origin in S. 2489. The conference report was agreed to by the House on September 26 and by the Senate on September 27. H.R. 5167 was signed by the President on October 17, 1984 and became Public Law 98-525.

Chapter V. Small Business Administration

Oversight of SBA and its programs is a primary responsibility of the Committee. The panel has sought to aid SBA in setting objectives and strategies, to reform and improve existing SBA programs, and to create efficient, well-directed new programs and approaches for the agency when necessary. Among the actions taken by the Committee over the last two years toward this end have been the development of appropriate spending levels for all of SBA programs, with proposed increases in the guaranteed loan program and limitations on direct loan activities; the reform of the secondary market for SBA guaranteed loans; the establishment of a Computer Crime and Education Program within SBA; and the reauthorization of the Small Business Development Center (SBDC) management asistance program.

These actions have been consistent with the Committee's view that SBA should place a greater emphasis on its nonending functions, such as advocacy, economic research, management and technical assistance, innovation and research, and procurement assistance. The Committee intends to continue its efforts to ensure that the Agency effectively and efficiently serves the needs of the small business community through its programs, and that it utilizes private sector resources and expertise to the maximum extent possible in achieving this goal.

SBA AUTHORIZATION LEGISLATION

On May 13, 1983, the Committee met in executive session to consider legislation authorizing SBA programs for fiscal year 1984 and 1985 and reported out an original bill, S. 1323. Th legislation incorporated provisions of four bills introduced by Senator Nunn on March 9, 1983, as well as recommendations from the Committee's Chairman. These measures, which were the focus of a hearing on April 13, were:

S. 742; to increase the program ceiling for certified development companies operating pursuant to section 503 of the Small Business Investment Act of 1958 from $350 million to $400 million in fiscal year 1983 and from $350 million to $500 million in fiscal year 1984;

S. 743; to increase the program ceiling for Small Business Investment Companies (SBICs) from $160 million to $250 million for fiscal year 1983 and 1984;

S. 744; to increase the program ceiling for Minority Enterprise Small Business Investment Companies (MESBICs) from $35 million to $45 million for fiscal year 1983 and 1984; and

S. 745; to authorize the SBA to purchase or guarantee debentures under section 501 of the Small Business Investment Act of 1958 and for state and local development companies to participate in the program authorization for guarantees of debentures established in current law for certified development companies.

In addition to the texts of those four bills, S. 1323 included a proposal recommended by Senators Weicker and Nunn that established revised 1985 spending program levels for programs, salaries and expenses, and the agency authorizations.

For fiscal year 1984, S. 1323 contained the following provisions:

an authorization of $20 million for SBA's direct loan program to be used only to assist the handicapped, while at the same time eliminating all of the other direct loan programs under section 7(a) of the Small Business Act;

an increase in the program ceiling for SBA's general business loan guaranteed program to $2.8 billion;

an increase in the program ceiling for SBA's section 503 program to $500 million, and within that level permitting SBA to guarantee debentures issued by state and local development companies operating under section 501;

a raise in the program ceiling for MESBICs from $35 million to $45 million;

an increase in the authorization ceiling for salaries and expenses to $256.5 million; and

a general authorization for funds to be appropriated to $1,044 million.

Further, S. 1323 dictated the following program levels for fiscal year 1985:

$20 million for SBA's direct loan program to be used only to assist the handicapped;

general business loans ($3,000 billion), handicapped ($5 million), economic opportunity ($60 million), energy ($15 million) and 501 and 503 ($500 million);

$45 million for MESBICs and $250 million for SBICs;

$1.4 billion for the Surety Bond Guarantee Program;

$250 million for the Pollution Control Bond Guarantee Program.

The legislation also provided for:

a prohibition on any loans under the section 7(b)(3) non-physical disaster assistance program which authorizes loans to

small businesses because of economic injury due to direct government interference, federal law, or state or local action in conformity with federal law;

a $261 million authorization for salaries and expenses; and

a permanent allowance for sheltered workshops and rehabilitation facilities employing handicapped persons to bid on federal contracts under the set-aside program for small businesses, as long as they do not exceed $100 million per year.

The Committee rejected an amendment offered by Senator Tsongas to restore funding for the direct loan program to the $150 million level. Following that vote, the Committee accepted a second amendment by the Massachusetts senator to continue funding for the direct loan program for Vietnam-era and disabled veterans, as established in Public Law 97-72 for fiscal years 1984 and 1985. The Committee also adopted an amendment offered by Senator Levin, requiring that SBA to fully utilize the authorizations provided for by Congress, subject only to qualified applications and appropriations Acts.

S. 1323 was unanimously passed by the Senate on October 7, 1983. However, disagreements with the House of Representatives over disaster loan terms and interest rates could not be resolved, and a conference agreement with the House was never consummated. Therefore, Chairman Weicker and the Committee worked closely with the Appropriations Committee in developing a funding level for SBA in the absence of an authorization bill. The appropriating measure, which became Public Law 98-166, incorporated most of the initial Committee recommendations on spending amounts and retained the unprecedented $2.65 billion figure for general guarantee business loans.

Late in the Second Session, the Committee produced another piece of authorizing legislation, H.R. 6013. This was necessary because the General Accounting Office [GAO] ruled in July 1984 that the fiscal year 1984 levels for the handicapped loan program, SBICs and MESBICs exceeded amounts statutorily determined by the earlier appropriating law. H.R. 6013 would have changed the 1984 spending levels for just three programs: (1) the handicapped loan program would increase from $15 million to $20 million; (2) SBICs would increase from $160 million to $250 million; and (3) MESBICs would increase from $35 million to $41 million.

Because of certain controversial, non-germane amendments attached to these provisions by the House Committee on Small Business in the rush toward adjournment, a compromise on this measure could not be reached. The end of the fiscal year on October 1 passed with no action having been taken to resolve the program's funding crisis. A solution was arrived at when Conference report language to H.J. Res. 648, the Continuing Resolution spending bill was agreed to prior to adjournment. Specifically, the Conferees directed SBA to fund SBICs, MESBICs and handicapped loans at the following levels for 1985: $265 million; $47 million and $24 million, respectively. These amounts are equal to the backlog of qualified loans which were not processed by September 30, the end of the fiscal year 1984.

SMALL BUSINESS SECONDARY MARKET IMPROVEMENTS ACT

The secondary market for loans guaranteed by SBA was established by the agency in 1972 in order to lower borrowing costs for, and to increase the flow of, capital to small businesses. The market has been largely successful in achieving this end because banks sell the guarantee portions of SBA loans as securities, acquire additional funds, and, in turn, make these funds available to businesses through conventional lending.

However, studies and investigations by SBA, GAO and the Committee during 1983 and 1984 determined that a combination of market imperfections and administrative problems had seriously hurt the operations of the SBA secondary market program. The comparatively small size of the individual loan guarantees often deterred large, institutional investors with their potentially significant reserves of capital, from investing the SBA loans sold into the secondary market. In addition, investors were found to be unable to accurately determine a fair market value for loans due to a lack of information and the inablility to assess risks, such as premium loss, payment deferrals, and slow payment by SBA on loans that had defaulted. Thus, some brokers had been able to extract exorbitant profits from unwary investors, and other potential investors had been warned against investing in the market. Further, SBA failed to address these problems in order to improve market efficiencies.

A bill intended to improve the operation of the SBA secondary market program, S. 2375, was introduced on February 29, 1984, by Senators Weicker, Bumpers, D'Amato, and Dixon, and referred to the Committee.

On March 6, the Committee held a hearing on the legislation and received testimony from representatives of brokerage firms, bankers, GAO, an SBA. All of the witnesses, with the exception of SBA, favored the legislation. The witnessess testified that the increased market activity generated by this legislation would produce market efficiences that could lower the interest rates for small businesses. Many business and trade associations notified the Committee of their support. These organizations included Small Business United, U.S. Chamber of Commerce, Independent Bankers Association, National Small Business Association, Small Business Legislative Council, National Association of Small Business Investment Companies, American Association of Minority Enterprise, Small Business Investment Companies, and National Association of Small Business Development Companies.

On June 20, the full committee met in executive session to consider S. 2375, and voted unanimously to report the bill favorably with an amendment in the nature of a substitute. On the following day, S. 2375 passed the Senate and was referred to the House, which passed it on June 25. On July 10, the measure was signed into law by the President as Public Law 98-352.

The legislation was drafted to make reforms in several specific areas. First, the measure permits pooling of SBA guaranteed loans into larger lots, with the agency guaranteeing the timely payment of interest and principal on pool certificates. Second, the bill requires SBA to provide for central registration of all SBA guaran-

teed loans sold and resold in the market. Third, the legislation requires the seller, prior to a sale, to provide purchasers of SBA guaranteed loans with a disclosure of information the agency considers necessary to make prudent investment decisions. Fourth, the legislation includes a provision giving SBA the authority to ensure that broker-dealers operate consistent with the provisions of the Act. Fifth, it gives statutory authority to the secondary market program instituted administratively by SBA in 1972. Finally, the legislation requires SBA to report annually to Congress on the secondary market operations during the preceding year. A more detailed explanation of each component of the legislation follows.

POOLING

A major element of Public Law 98-352 is the authorization for the SBA to pool the guaranteed portion of SBA loans. Pooling permits the sale of SBA loans into larger lots and is thereby designed to attract institutional investors, such as pension funds and insurance companies, to invest in small business securities.

An important feature of the pooling, as provided for in S. 2375, is the guarantee of timely payment of prinicpal and interest. Delays in payment from the borrowers and lenders have caused significant problems for investors, and without a cash flow that can be reasonably estimated, the value of a loan is difficult to determine. Also, major institutional investors prefer investments with timely payments so that planned cash outlays can be properly funded. By ensuring the timely payment of principal and interest on the pool certificates, the securities based on the pools will be more attractive to investors. By making the instrument more attractive to investors, the Committee expects that additional capital will be funneled into small business lending.

FISCAL TRANSFER AGENT

Under the Secondary Market Act, SBA is required to contract with an agent to carry out the central registry for recording all sales and resales of SBA guaranteed loans in the secondary market. Further, SBA is required to contract with an agent to carry out the central registry for recording all sales and resales of SBA guaranteed loans in the secondary market.

Within 90 days after enactment, Public Law 98-352 required SBA to have developed and promulgated final rules and regulations regarding the terms of the contract with a fiscal transfer agent to carry out the central registration and pooling functions. In recognition of the material changes to the operations of the existing market, the Committee has put a two year limitation in the statute on the length of the initial contract with the fiscal transfer agent. During that two year period, the Committee expects the agency to evaluate the agent's performance and determine whether the contract with the initially-selected agent should be renewed or whether a new agent should be contracted with.

CENTRAL REGISTRATION

An additional, major feature of the new law provides for central registration of all SBA guaranteed loans sold and resold in the marketplace. SBA is instructed to require its agent to carry out on behalf of the agency the central registration functions required by the legislation. Central registration will provide the Administration and the Congress with data which could be invaluable in determining the market activity of SBA guaranteed loans. One of the major problems which led to abuses in the current market is the inability of investors to determine the fair market value of SBA loans. With the information collected through central registration, SBA will be able to provide investors, on a periodic basis, with summary information such as the average premium paid for an SBA loan, average servicing fees collected by lenders, the average life of a loan, the prepayment and default rates, and the amount of market activity. With this information, risks associated with SBA guaranteed loans could be more easily quantified and incorporated into determining a fair market value for the loans. Easier valuation will make the secondary market more attractive to both lenders and investors.

Currently, after the original sale into the secondary market, only about 40 percent of the loans sold are recorded centrally, and no central records are kept on the other 60 percent of secondary market sales. However, even the information that is collected regarding secondary market transactions is insufficient to accurately and adequately assess the performance of the sale and resale of guaranteed loans. By requiring the agency to keep a record of all sales and the essential terms of each sale, central registration will enable both SBA and Congress to better monitor the market process and ensure that it functions efficiently.

DISCLOSURE

Many of the investor difficulties in the market for SBA loans, as noted above, have stemmed from misunderstanding and misrepresentations about SBA guaranteed obligations. Public Law 98-352 would require sellers of guaranteed loans or trust certificates representing interests in a pool of guaranteed loans, to disclose to purchasers, prior to the sale, pertinent financial facts about the loan or instrument being sold. Specifically, the seller is now required to disclose to the purchaser the terms, conditions and yield of SBA instrument being sold, allowing the purchaser to better assess and measure the value of the investment. The Committee has also recommended that the Administration develop procedures to better inform investors as to the unique nature and risks of this market and that the agency seriously consider using a disclosure cover page to highlight the terms, conditions, pricing history, and risks for loans sold and resold in the secondary market.

BROKERS/DEALERS REGULATIONS

It is expected that both SEC registered, and non-SEC registered brokers and dealers, may participate in the SBA secondary market program. The new law authorizes SBA to regulate brokers and

dealers who participate in the secondary market. In exercising this regulatory authority, the Committee expects SBA to work closely with the SEC in its efforts to ensure that broker/dealers operate in a manner consistent with purposes of this Act. The Committee believes that SBA's regulatory authority should not in any way conflict with or usurp the jurisdiction of the SEC.

STATUTORY AUTHORITY

In giving a statutory base to the current secondary market process, the legislation provided SBA with the authority to make some major structural changes in the market process. In particulary, the agency will now be better able to monitor and regulate the market, which should minize a recurrance of abuses in the market. The sale of loans in the secondary market is permitted only after certain statutory requirements are met, including the following:

the administration shall not review any loan documentation previously approved if, prior to a sale, the lender certifies that it closed the loan properly, and that it has substantially complied with the terms of its guarantee agreement with the administration;

all fees due the administration must have been paid prior to the sale; and

all proceeds of the loans must have been fully disbursed prior to the sale.

REPORT TO CONGRESS

A final provision of Public Law 98-352 requires the Administration to annually transmit to the Senate and House Committees on Small Business, a report on the secondary market operations. In this report, the agency is required to synthesize the data gathered from the central registration requirement and provide summary information, such a the share of SBA-guaranteed loans sold in the secondary market, with a breakdown by interest rate, size of loan, size of lender, servicing fee and premium. The report will provide detailed information on pools, an analysis of all data contained and the effectiveness of the secondary market in providing additional capital to small business at reasonable rates.

DISASTER LOANS

On March 1, 1983, Senator Weicker introduced legislation, S. 628, that would make permanent the reforms adopted by the Congress three years before in Public Law 96-302. This measure removed SBA from agricultural disaster lending and placed this responsibility again primarily with the Farmers Home Administration. These reforms were due to expire on October 1, 1983.

In addition, the Senate adopted reconciliation guidelines specifically for the SBA in order to achieve the following savings in budget authority and outlays over the next three fiscal years.

	Budget authority	Outlays
1984	139	287
1985	555	466
1986	544	443

This reconciliation instruction was based on the Congressional Budget Office [CBO] determination that farmers are included in the SBA Disaster loan program because of the expiration of the amendments to the Small Business Act which removed SBA, for all intents and purposes, from involvement in agricultural disaster lending.

On September 20, the Committee held a markup session on the reconciliation instructions and, pursuant to H. Con. Res. 91, reported its recommendations to the Committee on the Budget that the agricultural lending reforms in current law be extended for three years. This action enabled the Committee to comply with its instruction to achieve the savings noted above.

The recommendations of the Committee were subsequently incorporated as Title III of S. 2062, which was reported by the Budget Committee to the Senate on November 2, as an original measure.

The House passed reconciliation bill, H.R. 4169, contained provisions that achieved similar savings, but only by placing an artificial cap on disaster lending. This action permitted the House to both reduce interest rates on disaster loans and create new disaster lending programs by mandating the following:

lower interest rates to 4 percent (for both homeowners and businesses without credit elsewhere) and 8 percent (for both homeowners and businesses with credit elsewhere) which would *effectively bring farmers back to SBA;*

approve $100 million for the non-physical disaster program. (Funding for this program was specifically repealed in the Omnibus Reconciliation Act of 1981, P.L. 97-35);

approve a new PIK related program within the non-physical program. (The Senate Committee specifically rejected a similar amendment offered by Senator Baucus during mark-up);

approve a new peso devaluation program within the non-physical program;

add other provisions that would extend benefits of eligibility: (1) by making businesses eligible for loans for 100 percent of loss rather than the current 85 percent; and (2) increase homeowner loan limits from 50,000 to 100,000 for realty and from 10,000 to 20,000 for personal property.

In summary, these House provisions were spending, not savings, provisions. Through a capping device, the House artifically created money to fund new programs, expand old programs, lower interest rates and increase benefits.

H.R. 4169 passed the House on October 25, 1983 and was laid before the Senate and passed without amendment by the Senate on April 5, 1984. This action was taken despite the warnings from Senator Weicker that the major disaster lending reforms embodied in Public Law 96-302 and retained in the Omnibus Reconciliation

Act of 1981, Public Law 97-35, were being gutted by enactment of this bill.

The provisions in H.R. 4169 were signed into law by the President on April 18, 1984 as Public Law 98-270.

POLLUTION CONTROL FINANCING PROGRAM

The Continuing Resolution appropriations bill that passed late in the Second Session, H.J. Res. 648 and later Public Law 98-473, served as the vehicle for a provision that would reverse an Office of Management and Budget (OMB) ruling against the use of tax exemption financing in this program, which had seriously limited utilization of this important program designed to provide long-term financing to small businesses which purchase and install federally-mandated pollution control equipment.

In 1976, Congress authorized SBA to guarantee 100 percent of the payments due from eligible small businesses under qualified contracts for the planning, design, financing or installation of pollution control facilities or equipment mandated by governmental pollution control regulations. Contract financing is normally obtained from the proceeds of the sale of tax-exempt bonds issued by State or municipal authorities.

By permitting the use of tax-exempt, SBA guaranteed pollution control revenue bonds, SBA cooperates with commercial and investment banks and local and State authorities to make available long-term, low-interest financing to eligible small businesses in the same manner that large corporations obtain financing for pollution facilities.

The Committee has reviewed extensively this program and found that it was one of the most successful SBA programs. However, in recent years the program has faced significant cut-backs. For example, in its budget recommendations to Congress for Fiscal Year 1984, the SBA maintained its policy of advocating limiting the pollution program level to $150 million and not guaranteeing contracts financed through the use of tax-exempt industrial development bonds. The Committee viewed the continued availability of the guarantee of contracts financed with tax-exempt instruments to be essential to the viability of the program and opposed the SBA position. In addition, the Committee had dictated an authorization of $250 million in its authorization bill, S. 1323.

Repeated testimony of small businesses, bankers, underwriters, and State pollution control financing agencies overwhelmingly demonstrates the importance of small businesses' continued access to this small, but crucial source of guarantee authority. The Committee concurred, maintaining that it is sound public and fiscal policy to continue to permit small businesses which are forced to install nonproductive pollution equipment access to this important, and often only source of capital.

As a result, on March 11, 1983, the Committee adopted an amendment to S. 499 offered by Senator Levin which would insure that SBA continue to issue guarantees on contracts financed through the use of tax-exempt industrial development bonds. By this action, the Committee declared its intent that the pollution control program once again become viable and offer to those small

businesses affected by governmental pollution regulations the opportunity to meet those regulations through the reasonable, long-term financing that this program offers.

Because S. 499 was not considered by the full Senate, Senators Levin and Weicker attached an amendment to the Continuing Resolution appropriations bill identical to the Committee amendment to S. 499. This language became law on October 12, 1984, as part of Public Law 98–473.

THE CORPORATION FOR SMALL BUSINESS INVESTMENT CHARTER ACT

The Corporation for Small Business Investment Charter Act, S. 2686, was introduced by Senators Weicker and D'Amato on May 17, 1984 and referred to the Committee. This purpose of the bill was to amend the Small Business Investment Act of 1958 to create a Corporation for Small Business Investment and to transfer certain functions of SBA to the Corporation. This new institution would be a government-sponsored, private corporation which is designed to provide access to the private capital markets for Small Business Investment Companies [SBICs] so they, in turn, could provide a stable and continuing flow of venture capital to small business.

This legislation presented a creative and intriguing approach to the problem of making available a reliable and stable source of venture capital. At the same time, the legislation is complex and has raised a number of policy and technical issues which required thorough study and public debate. Among the areas which were left to be examined were the manner and degree of federal intervention in the capital markets on behalf of small business; the government's oversight responsibility for federally chartered corporations; and the balance between self-government, deregulation, and protection of the interests of small business. Consequently, the legislation was introduced in an effort to initiate a public dialogue on the proposal.

The new Corporation would have characteristics similar to those of other congressionally-chartered institutions such as the Federal National Mortgage Association and the Student Loan Marketing Association.

The input gained as a result of the introduction of S. 2686 aided the Committee a great deal in refining the proposal for a Corporation for Small Business Investment. This process will continue in the First Session of the 99th Congress, in which Senator Weicker intends to reintroduce the legislation and hold hearings on the proposal.

COMPUTER CRIME

Computer systems are rapidly becoming an integral part of day-to-day small business operation. Yet, while they realize great benefits from these technological advancements, small firms are becoming vulnerable to a cancer growing as quickly as the technology itself: computer crime.

A 1983 study predicted a 47 percent rise in computer usage within the small business community between mid-1983 and mid-1984, with the majority of sales made to firms with fewer than 20 employees. More than one half million small businesses are now

using computers, reflecting a 25 percent jump over a three year period. However, many of these owners and managers lack the money, technical knowledge and experience to adequately safeguard the critical information their electronic data systems store.

On March 7, 1984, Senator Tsongas, chaired a hearing devoted to issues concerning computer crime and its prevention, and specifically to consider S. 1920, the Small Business Computer Crime Prevention Act, of which he was the prime sponsor.

Testimony was provided by Senator Nunn, a co-sponsor of S. 1920; Representatives Vin Weber, R-Mn., and Ron Wyden, D-Or., sponsors of parallel legislation in the House; Dr. Stuart W. Katzke of the Institute for Computer Sciences and Technology, National Bureau of Standards; James Thompson, the SBA's Associate Administrator for Management Assistance; and witnesses with expertise in computer education, insurance, security, and business applications of computers.

Senator Tsongas stated that by passing S. 1920 and requiring SBA to take advantage of existing expertise within the public and private sectors to control computer crime and pass on methods of limiting thefts to small business owners, the Congress will have created a cost-effective solution to many of the small business victims of computer misuse.

Senator Nunn gave testimony supporting the need for computer crime prevention measures like S. 1920, noting that, "(it) has already been established that the private sector loses at least $1 billion annually through direct computer crime only." Senator Nunn explained the two key characteristics distinguishing S. 1920 from other bills combating computer fraud:

> First, our focus in this legislation and in the hearings is on the special problems of computer security which confronts small business. Foremost among these concerns, in my view, is a lack of awareness by the small business community that computer security is an issue in which they have a vested interest.
>
> A second major difference between S. 1920 and many of the other computer-related bills is its focus on the educational, as opposed to punitive, approach to increasing small business awareness of computer security, thereby directly decreasing the vulnerability to unauthorized access. We have focused on the educational side of computer security because we recongize that the majority of threats to the small business computer user originate within the small business—as opposed to originating from an outside criminal element.

A. Jason Mirabito, Professor of Law at Suffolk University, gave testimony on behalf of the Smaller Business Association of New England [SBANE], representing more than 2,000 firms, many with computer systems and concern for their security. Mirabito detailed current legislative activities concerning computer crime and the adequacy of these provisions to effectively combat computer thievery.

He described existing laws dealing with computer fraud:

> Crime against the United States are codified in Title 18 of the United States Code. Title 18 contains some 40 sections that potentially may be used in the prosecution of computer crimes.
>
> Those most commonly applied are section 641 (embezzlement or theft of public money, property or records), section 2314 (interstate transportation of stolen property), section 1341 (mail fraud), and section 1343 (wire fraud).

Mr. Mirabito outlined failed attempts by Congress since 1977 to pass additional computer crime prevention measures. He noted, however, that others have questioned the need for this legislation in light of the already-existing federal legislation, which could be interpreted to cover virtually all presently existing types of computer crime.

In anticipation that this point could again be raised with regard to the Small Business Computer Crime Prevention Act, Mr. Mirabito highlighted the difference in focus between S. 1920 and other proposed measures:

> If one accepts the argument that many computer crimes are either not discovered, not discovered until too late, or not reported at all, then S. 1920 is an important bill, because the various state and federal laws look to punishment and, to some extent, deterrence, of the crimes once committed. They therefore look at and attempt to treat the problem after the fact; that is, regulate how the governments treat computer crimes after they have been committed.
>
> The existing federal and state laws do not, and obviously cannot, establish the precautions necessary to prevent the computer crime from being committed in the first place. It is here that S. 1920 can be of immense assistance, particularly to small companies who cannot afford to hire the consultants to fashion their security measures to deter computer crimes directed against them.

The SBA, represented by Mr. Thompson, Associate Administrator for Management Assistance, submitted testimony commending the Committee for recognizing the need to help small businesses reduce computer crime. However, Mr. Thompson opposed S. 1920, claiming that a task force to research the impact of computer fraud on small businesses is unnecessary. The agency maintained that to define "the nature and scope of computer crimes against small businesses" as mandated by the bill, determine the effectiveness of state legislation and security equipment in computer crime prevention as required in the legislation, and develop guidelines to assist small business to evaluate the security of computer systems is unnecessary, as such information is currently available from both the federal government and the private sector.

Dr. Sanford Sherizen, president of Data Security Systems, Inc., stressed the need for business to recognize the importance of computer security and provided the Committee with a summary of the essential elements of computer security management:

> First, computer security is no longer an optional decision but may be fundamental to the survival of a business. It is no longer cost effective for a business to treat computer crime as just another type of business risk which is controllable by such traditional approaches as detection after the fact, insurance coverage, or absorption of losses.
>
> Second, the core issues of computer security can and must be understood by nontechnical managers, since they will be given the control responsibility, particularly because today's technical solution is tomorrow's social problem.
>
> Third, the essence of computer security lies with management controls, reviews, and policies developed with the active support and involvement of top management.
>
> Fourth, there are a variety of management questions that management can learn which they can raise with technical staffs in order to evaluate the adequacy of computer protections in their business.

In his testimony, Dr. Sherizen explained that computer crime is becoming more prevalent because it involves minimum risk for maximum gain:

> Computer crime can be committed in fractions of a second with readily available equipment, sometimes including the equipment that is provided to employees for their authorized work functions. If done with skill, these manipulations can occur with minimal risk for the perpetrator, since audit trails may not be produced or may be deleted, leaving little for auditors or investigators to follow. To compound these computer problems, there is relatively little law directly applicable to computer crime and little interest on the part of law enforcement officials to take on these cases, even in the rare event that a business decides to press charges.

Dr. Sherizen applauded the Committee's efforts to avert a crisis within the small business community caused by computer misuse. He also suggested that SBA's computer crime prevention program include a telephone hotline to handle computer security queries from small business owners, assistance to computer crime victims, incentives to insurers to provide small businesses with coverage against computer fraud, and further research into the basic facts about computer crime and its victims.

On May 8, 1984, the Committee met in executive session to consider S. 1920. After reviewing the testimony, Senator Tsongas offered a Committee substitute to H.R. 3075, the House-passed Computer Crime legislation. The Committee substitute rejected the concept of establishing a task force on computer crime. Instead, the legislation directed SBA to establish a computer security education program in concert with the establishment of a private sector advisory council.

The full Senate passed H.R. 3075, as amended, and sent the proposal back to the House for further consideration. Following staff negotiations, certain House amendments relating to private sector

cosponsorship of SBA training programs were agreed to by both bodies, thereby clearing the measure for the President's signature. President Reagan signed into law the Computer Crime Security and Education Act of 1984, on July 16, 1984. (P.L. 98–362).

In its final form, the legislation directs SBA to help small firms battle computer tampering by establishing a small business computer security and education program to obtain and disseminate within the small business community information regarding proper utilization and management of computer technology, the nature of computer crimes committed against small companies, and basic computer security measures. Additionally, the program permits periodic forums for small businesses to increase their knowledge of computer fraud and provides for training opportunities to educate company managers on computer security techniques.

The Act also established the Small Business Computer Security and Education Advisory Council, a body whose responsibility it is to study and apprise SBA of the nature and scope of computer crimes committed against small business concerns; the effectiveness of federal and state law in deterring computer-related criminal activity of prosecuting computer-related crimes; the effectiveness of computer technology and management techniques available to small business for increasing their computer security; the development of information and guidelines to be made available to the administrator to assist small business concerns in evaluating the security of computer systems; and other appropriate functions of the education program.

In addition, the Act permits SBA to cooperate for the first time with profit-making as well as nonprofit-making organizations, using their resources and expertise to improve the quality and scope of the agency's management assistance program provided to small businesses. The administrator has been instructed to take every precaution to avoid the undue promotion of the products or services of a profit-making participant.

The Committee intends to monitor SBA's implementation of the provisions of the Act, and looks forward to reviewing the agency's report to the Committee on the impact of the assistance provided to the small business community in cooperation with profitmaking companies.

SMALL BUSINESS DEVELOPMENT CENTERS

For many years the Committee has recognized a primary cause of small business failures to be the owner's fundamental lack of effective business skills and management techniques. In order to provide entrepreneurs with the educational resources with which to gain proper "know how" regarding the establishment and development of their firms, the Committee has long supported, and gained enactment of legislation, S. 1429, providing for the reauthorization of the Small Business Development Center (SBDC) program within SBA.

This program has proven to be an effective and widely-used management assistance resource for small business. SBDCs, first established as part of a pilot program in 1976, make available to any small business cost-free management counseling and technical

advice on an individual basis and in a local setting. The centers, which are often located on university campuses, provided one on one consultations and conduct conferences and seminars on various aspects of running one's own firm. Importantly, each SBDC draws on the existing resources of the business community and local government to obtain and disseminate information and otherwise further its objectives. Originally, there were only eight SBDCs. Currently, such centers exist in 37 states and the District of Columbia.

After an initial four-year test period, the SBDC program was statutorily established in 1980 for an additional four years and later extended one additional year through fiscal year 1985. The Committee sought to continue the program for a longer period of time, and S. 1429, the Small Business Development Center Improvement Act of 1984, was introduced by Senators Weicker and Nunn on November 16, 1983.

The Committee held three hearings on the program on February 8, and July 16 and 19, 1983. On February 8, 1983, prior to introduction of S. 1429, Senator Nunn chaired a hearing in Atlanta, Georgia, to examine the growth and effectiveness of the program in that state.

Testimony received at the Georgia hearing was unanimously supportive of the SBDC program. Since its start in 1977, the Georgia program has expanded from its base at the University of Georgia in Athens to a network of 11 centers, located throughout the state. In 1982, more than 4,000 businesses received assistance from the centers.

Addressing the question of cost-effectiveness, Dr. William C. Flewellen Jr., University Professor of Business and Industrial Development at the University of Georgia, discussed the results of a survey conducted by the Georgia SBDC of the 700 firms it counseled during 1980–81. He noted that:

> Our analysis showed that sales of those firms in the year after counseling increased 25 percent on the average, compared to a 4 percent increase in this period of recession for all businesses in Georgia. This means an increase of sales of $188 million over and above the 4 percent they might have gotten if they were just included in all Georgia business. The number of employees increased 9 percent, compared to 1.1 percent for all Georgia business. This meant an increase of 25,000 employees for all Georgia businesses.

Dr. Flewellen and other witnesses noted that the Georgia SBDC program had also placed a great deal of emphasis on minority business development within the state and in the area of export promotion and assistance.

In both minority business development and export promotion, Dr. Flewellen said:

> We are bringing to bear the resources of the university system on the problems of small business. We bring students into the picture. We bring volunteers of the business community into the picture. We are using the resources of the universities to enable us to put more Federal dollars actually out into the action programs.

Dr. Flewellen emphasized the Georgia program's close ties with the private business community, and told the Committee that competition with the private sector has not been a problem for the SBDC. That view was reinforced by Glenn West, Executive Vice President of the Macon County Chamber of Commerce, who said that, far from competing with his organizations, the SBDC has actually strengthened the Chamber:

> I think the fact that our organization has been a part, and is in the eyes of the community an integral part of the organization of the SBDC, frankly, has helped small businesses in our community to understand that our chamber is not only big business, but interested in all businesses of the community.

Mr. West called the SBDC program "an excellent illustration of the synergism that can come out of the public-private cooperation and partnership we have all been talking about."

On July 6, 1983, the Committee held a joint hearing with the House Small Business Committee's Subcommittee on SBA and SBIC Authority, Minority Enterprise and General Small Business Problems in Seattle, Washington. Senator Slade Gorton co-chaired the hearing with Congressman Parren Mitchell, Chairman of the House Committee.

The Washington State SBDC program had its roots in a small business assistance program started by Washington State University, and in 1979 the University received official SBDC designation from SBA.

While witnesses from the university, the SBDC and SBA expressed enthusiastic support for the program, all acknowledged that there had been problems in its operation in the past. These included lack of cooperation and communication between the agency and the SBDC, and friction between the SBDC program and SCORE.

SBA District Director Stephen Hall admitted that, in the past, "we have not sufficiently supported SBDC with our share of in-depth counseling case referrals," but pledged that "teamwork and cooperation will be noticeably strengthened as we proceed with our new Business Development and Assistance Program." Mr. Hall said that new initiative "calls for SBA's active contribution to the process of planning and shaping Washington State business development," to more closely coordinate SBA's national priorities with the state's needs.

The hearing also featured testimony from a broad range of entrepreneurs and small business owners who had been served by the SBDC. Without exception, they were enthusiastically supportive of the program, and strongly advocated its continuation.

Finally, on July 19, 1983, a day-long hearing was held by the full Committee in Washington, D.C.

The Washington, D.C. hearing, co-chaired by Senators Weicker and Nunn, was intended to be the culmination of the Committee's intensive SBDC review. As such, the Committee attempted to solicit testimony from all parties connected or concerned with, or affected by, the SBDC program. Witnesses included SBA and state officials, a panel of SBDC Directors, a panel of small business repre-

sentatives, the Chairman of the SBDC National Advisory Board, SBI and SCORE association director, and representatives of Centaur Associates and Berkeley Planning Associates, who performed the evaluations required by the law.

Testimony at the July 19th hearing was highly supportive of the SBDC program. While there were some concerns expressed regarding various aspects of the program and its operation, all wanted to see the program continued and improved.

There were, however, a number of suggestions by witnesses for changes to strengthen and/or clarify certain aspects of the program. These recommendations centered around those areas of concern most frequently mentioned during the three hearings: duplication of services, competition with the private sector or other SBA management assistance programs, such as SCORE, lack of program consistency from state-to-state, including differences in funding mechanisms, difficulties in long-term planning because of the uncertainty about the continuation or level of federal funding, lack of clear guidelines as to size of client-businesses to be served and their graduation from the program, and unclear direction as to the need for, and contents of, statewide plans and state SBDC advisory boards.

On November 1, 1983, the Committee meet in executive session to consider S. 1429 and favorably and unanimously reported the bill. After a House-Senate Conference, the Senate agreed to a compromise version of the bill on August 6, 1984. The legislation was signed into law on August 21, and became Public Law 98–395.

In addition to extending the SBDC program for six years, the Act makes several significant reforms in the program that should greatly enhance its use to small businesses.

First, the funding responsibilities of the state applicants are clarified. Under current law, eligible applicants for a state's SBDC must match the federal government's funding with an equal amount of non-federal money. The new bill mandates that of these non-federal funds, not less than 50 percent must be in the form of an up-front cash payment prior to the SBDC's acceptance of federal funds. A payment transition period for centers entering the program before October 1, 1986 is established to allow each center and the appropriate state legislatures to adjust to this requirement when necessary.

Second, the bill provided for a specific authorization level of $30 million for the program in Fiscal Year 1985. Thereafter, it provided for an annual appropriation of such sums as may be necessary to carry out the program but not to exceed $65 million.

Finally, the new law calls for a biannual review of each individual SBDC by SBA to ensure that the program's objectives are being met. This oversight will augment the one-time SBA evaluation of the entire program that was undertaken in 1983 and will assist Congress in properly monitoring the program's development.

SMALL BUSINESS INNOVATION RESEARCH ACT

During the 98th Congress, the Committee monitored the implementation of the Small Business Innovation Research Act (SBIR), Public Law 97–219. Senator Rudman, Chairman of the Subcom-

mittee on Innovation and Technology, conducted oversight hearings on March 16, 1983 and March 1, 1984 to insure that the program is being properly managed.

The SBIR program was originally developed and advocated by Senators Rudman and Weicker. It was designed to meet federal research and development needs through the use of small firms and to attract private capital to commercialize the results of federal research. As a result of studies of small business innovations, a series of congressional hearings and executive agency reports, the Committee concluded that one way to revitalize the economy would be to develop a means by which federal agencies could better tap the innovative potential of small businesses.

At the 1983 hearing officials from the National Aeronautics and Space Administration (NASA) testified before the Subcommittee in order to describe the steps the agency had taken to implement the program. Members of the Subcommittee were particularly concerned about the funding level of NASA's SBIR program because of a $7.8 million discrepancy between the amount originally appropriated and the figure relied upon during the preliminary negotiations. Senator Rudman stated at the hearing:

> NASA should be one of the best programs, but it will probably be one of the worst. We had anticipated the fiscal year 1983 program to be around $11 million. We are now told it will only be $3.3 million. We have a GAO report which I can tell you for the record, as one who understands the English language, is probably one of the greatest collective nonsequiturs I have ever seen in my life. It's findings with respect to the NASA shuttle program are totally unsupported and are conclusionary in nature.

Following testimony by Charles T. Newman, the NASA Comptroller, Senator Rudman criticized NASA's implementation of Public Law 97-219:

> I think in order for government to operate, it has to operate with good faith and good will. I believe that NASA, and possibly correctly, did oppose this bill or argued against it. When it finally became law, it decided that it must find a way to exclude some of the coverage of the law and evidently has been successful in doing so. Now, that may be fine for NASA. However, NASA is part of this Administration. This Administration has many close questions here—I will not mention them; you know them. We do not operate in an atmosphere of good will when many of us feel, rightly or wrongly, that NASA has been engaged in conduct here that has been designed to thwart, the will of the Congress.

The 1984 hearing was the first comprehensive oversight session conducted by the Subcommittee on the operation of the SBIR program from both a government and private sector perspective. Testifying at the hearing were representatives from the SBA, three of the agencies involved with SBIR, and both profit-making and nonprofit-making private concerns.

SBA Administrator, James Sanders, informed the Subcommittee of the actions the SBA had taken regarding the implementation of the Act:

> To facilitate the dissemination of information about the program, SBA developed a mailing list of qualified and interested small business concerns. This list was developed through an SBIR program pamphlet which, in addition to general program information, provided a tear-off mail-in card for application to the SBIR mailing list. The fiscal year 1983 list grew to over 40,000. In order to purge and improve the mailing list the SBA contracted with a small business to have the system computerized. As of this date we still receive an average of 450 inquiries a week.
>
> During fiscal year 1983, the SBA published six pre-solicitation announcements. Approximately 340,000 copies were disseminated throughout the country. The presolicitation announcements are of considerable assistance to the public in that they present the basic solicitation information for all the SBIR agencies in a succinct and understandable manner. During fiscal year 1984 they will be published quarterly.

Dr. James S. Kane, Deputy Director of the Office of Energy Research at the Department of Energy (DoE), expressed the approach of that department in embracing the SBIR program:

> The DoE views the SBIR program as an opportunity, as a challenge and as a commitment: an opportunity, to enhance our technical programs by bringing into them a heretofore largely untapped national resource, the technical expertise and sophistication residing in the high technology small business sector; a challenge, to define and conduct a program of outstanding technical quality; and a commitment, to facilitate the transfer of technology developed under SBIR to the commercial marketplace, whenever appropriate.

Dr. Leo Young, Director for Research and Laboratory Management in the Office of the Under Secretary of Defense, made the following observation on behalf of the Department of Defense (DoD):

> It is our belief that we are reaching most of the small businesses with the capability and interest to participate in DoD R&D programs.
>
> Feedback from the services and defense agencies on the quality of SBIR proposals is still incomplete. However it is clear that the DoD participating agencies believe that the group of successful Phase I proposals funded in fiscal year 1983 compared well in overall quality to proposals funded in the normal R&D programs. The true measure of success of SBIR will, of course, be the outcome of the Phase II efforts and in particular the number of Phase III efforts which will be spun off into industry with the resulting production that comes from it.

Alexander Glass, President of KMS Fusion, Inc., added the following:

> We have found that the individual researchers have been extremely cooperative and enthusiastic about participating in the SBIR program; in the proposals we have submitted in this calendar year there is university participation in over one-third of those proposals.
>
> Small business acts as a catalyst for the university researcher, it plays a vital role. As a small business, we provide a project and product focus which the university does not normally provide. We connect interdepartmental interests. We bridge interdepartmental gaps, barriers which are very strong in universities.
>
> For example, in some of our work we bring together the Engineering College and the Medical School of the University of Michigan, and bring together researchers who normally would not talk to each other. Of course, the small business in the SBIR relationship fosters commercialization.

One of the success stories in the program was shared by Dr. William S. Partridge of Technical Research Associates, Inc.:

> Last year, we put in several proposals and were awarded five contracts, two from NIH, one from the Army, one from the Navy, one from NASA, and one from the Air Force. All of these are in the process of going into Phase II. We are writing proposals that will be submitted this week. All of them have achieved their objectives in Phase I.
>
> Now, the interesting thing, I think, about these five proposals is that these ideas had been around for 5 years, in the case of four of them. We had been trying to get more development money and did not have the internal funds to continue development on these ideas. This was the way we were able to get it. If it had not been for this program, we would not have been able to continue development on these ideas which had been in existence.
>
> I think there are many other small businesses that are in this condition. When they learn how to work through the program, a good many more ideas will be supported.

Additional testimony was given by some witnesses suggesting potential administrative changes to increase the efficiency of the program. Roger Little, President of Spire Corp., gave an account of the frustrations of his small firm's experiences:

> For instance, one criticism is that topics presented can be difficult to address. Examples are, some of the Department of Defense programs specify so closely a service there is little room for innovation. They say, "Use computer code so-and-so and do such-and-such calculation."
>
> We wonder, with the Department of Energy solicitation if there are small businesses that can design fusion reactors.

> In some cases, topics are excessive. NASA had too many topics. We had an experience of having the top proposal on a particular topic but were told that there was not enought money to go around. I think that is also true about the Department of Transportation solicitation.

Dr. William Raub, Deputy Director for Extramural Research and Training at the National Institutes of Health [NIH], announced a minor adjustment NIH would make to accommodate the agency as well as the small firms:

> We also plan to institute three application receipt dates annually rather than limit the small business community to a single opportunity each year. It is our belief that multiple receipt dates within a fiscal year would be welcomed by the small business community. This means that, if a company misses one deadline, it need wait only four months, not a year, for the next submission date. There are operational advantages as well. The establishment of three cycles per year will spread the review workload over the full year and, by operating in synchrony with our regular processes, it will achieve important economies of scale. One of the features that will be part of this three-cycle-per-year approach is that both Phase I and Phase II applications will be accepted on each receipt date.

Suggestions were not made for substantial restructuring of the SBIR program. With the exception of a few cases, the inaugural year of the SBIR program proved to be promising. As Senator Tsongas said, "improvements in the administration of the SBIR program will come as the program matures." The Committee will continue to monitor the development of the SBIR program at the various agencies, and it is expected that hearings will be held in the 99th Congress to insure that all are functioning in accordance with Congressional and executive branch intent.

OPINION MOLDER RULE

On November 11, 1983, Senator Sasser introduced S. 2084, a bill which would prohibit SBA from denying financial assistance to small business concerns solely because the primary business operations of such concerns relate to the communication of ideas.

Under SBA's current regulatory policy adopted in 1953, the agency will not issue loans to an applicant engaged in the "creation, origination, expression, dissemination, propagation, or distribution of ideas, values, thoughts, opinions, or similar intellectual property regardless of medium form, or content." This regulation is referred to as the agency's "opinion molder rule." The stated justification for this policy is threefold:

1. To avoid any possible accusation that the government is seeking to control editorial freedom through financial subsidization;
2. To avoid any government identification through its business assistance programs with concerns which produce material of religious or controversial nature; and
3. To further a belief that the constitutionally protected rights of freedom of speech and press ought not be compromised either by

the fear of government reprisal when financial assistance has been given, or by the expectation of government financial assistance.

SBA categorized the following businesses as "opinion molder" concerns: book, newspaper, magazine, greeting card, and calendar publications and distributions; radio and television broadcasting; film, record, and video tape production and distribution; theater and motion picture entertainment; and instruction and tutoring in academic subjects.

Since SBA's implementation of the rule, a number of exceptions and inconsistencies have arisen in its application. In 1978, SBA made an exception to the rule and permitted financing to businesses in the broadcasting industry, based upon the belief that they were already under government regulation by the Federal Communications Commission. Another exception to the rule was made for general book and music stores, as differentiated from specialty stores. The rationale for this distinction was that financial assistance to a store which stocks books covering a range of opinions would not involve SBA in the propagation of a particular set of ideas by providing financial assistance. Many small business concerns claim, however, that SBA's use of the term "general" is too vague and that this application of the opinion molder rule is unjustifiably broad and vague. These businesses further assert that the language of the SBA's opinion molder rule has forced the agency to make inconsistent distinctions in its application, which they claim would support a constitutional challenge to the rule on the basis of equal protection violations.

Under S. 2084, SBA would still be able to deny financing, if it determined that the financial assistance would be used primarily to:

inhibit religion;

threaten the overthrow of organized government by unlawful means; or

engage in any illegal activity or the dissemination of obscene materials which may be unlawful in any jurisdiction in which the small business concern may operate.

On May 17, 1984, the Committee held a hearing to consider S. 2084 and the SBA's opinion molder rule. James Sanders, SBA Administrator, explained the agency's current opinion molder policy in detail and provided comments on the bill. He stated that SBA opposed the bill in its current form on both policy and constitutional grounds, but was willing to try to work out compromise language to meet the agency's concerns and to diminish the impact of the rule on affected business concerns.

Other witnesses included representatives from the Theater Equipment Association and the Greeting Card Association. They discussed the impact that the opinion molder has had on the industries they represent and commented favorably on the proposed legislation.

Lastly, Robert E. Park, a professor at the George Washington School of Law, discussed the actual and potential constitutional problems raised by the legislative provisions contained within the measure and offered some alternative suggestions. He also stated that the current opinion molder rule did not, in his opinion, violate

any constitutional rights as had been asserted by those who opposed the rule.

NOMINATION OF MARY F. WIESEMAN TO BE INSPECTOR GENERAL

In accordance with its legislative responsibilities, the Committee, during th 98th Congress, considered and confirmed the nomination of Mary F. Wieseman to be the Inspector General of SBA.

A native and resident of Washington, D.C., Ms. Wieseman was nominated for the position of inspector general on March 16, 1983. On April 13, the Committee held a hearing on the nomination, and received testimony from the nominee and Administrator Sanders. Immediately following the hearing, the Committee, by unanimous vote, ordered the nomination favorably reported to the Senate. On May 10, Ms. Wieseman was confirmed by the full Senate.

CHAPTER VI. COMPETITION

FEDERAL ANTITRUST POLICIES

The ability of entrepreneurs to compete in a free and open market is critical to the health of the economy and the small business sector.

For the economic recovery to occur, Committee members believe that the marketplace must remain competitive. It is especially important that small concerns, whose expansion is crucial to our financial recovery, not be hampered by illegal and non-competitive acts. In the interest of a free, competitive economy, Committee members support vigorous enforcement of these laws.

During the 98th Congress, the Committee monitored the policy and enforcement practices of the Antitrust Division at the United States Department of Justice. The Members of the Committee had become concerned with an apparent erosion in the enforcement of the prevailing antitrust laws—particularly with respect to resale price maintenance cases. Therefore, in accordance with its oversight responsibilities on behalf of small business, the Committee cosponsored an amendment and conducted an oversight hearing to ensure that the Antitrust Division at the Department of Justice enforced the federal antitrust laws.

On October 21, 1983, Senator Rudman, Chairman of the Subcommittee on Innovation and Technology offered an amendment to the Department of Justice and Related Agencies Appropriation Act of 1984. This amendment, SP 2409, provided that none of the funds appropriated to the Department of Justice could be used to overturn or alter the per se prohibition on resale price maintenance in effect under federal antitrust laws. The amendment was approved by the Senate on October 21, 1983 and signed into law on November 18, 1983 as Section 510 of Public Law 98-166.

The oversight hearing was conducted on February 7, 1984 to review the policy and enforcement practices of the Antitrust Division.

The Committee was concerned with the mixed signals regarding antitrust enforcement coming from the Justice Department. William F. Baxter, then Assistant Attorney General in charge of the Division, had not only articulated a personal philosophy in various

forums which was inimical to the integrity of the antitrust laws, but he also attempted to mold these laws to fit his philosophy without the consent of Congress. Monroe Milstein, president of the Burlington Coat Factory, analogized what he termed the "selective" enforcement policy of the Antitrust Division under Mr. Baxter to "a police chief telling his patrolmen not to give out any tickets for speeding."

The sharp contrast between Mr. Baxter's personal opinions and the existing antitrust laws set the stage for the Committee's hearing on antitrust policy and enforcement practices at the Department of Justice. Chairman Weicker explained the importance of effective antitrust laws at the outset of the hearing:

> The antitrust statutes form one of the most important components of our free enterprise system. They are the first line of defense against unfair competition, and in that respect they are important to businesses—small business particularly—and to consumers of this nation. We cannot and I believe we must not, let them be undermined or disregarded.

J. Paul McGrath, who succeeded William Baxter as Assistant Attorney General in December, 1983, explained his policies and priorities with regard to antitrust law enforcement. In addition, testimony was heard from Frank Swain, Chief of the Small Business Administration's Office of Advocacy, and William M. Leech, Attorney General of the State of Tennessee.

Attorney General McGrath gave his assurance that the Antitrust Division will not abandon enforcement of existing antitrust laws:

> I want to state clearly for this record that unless and until the Supreme Court changes the law, and assuming that law is not, in turn, changed by new legislation, the enforcement policy of the Antitrust Division will be that resale price maintenance, as I described it a minute ago, is per se unlawful. That is the law we will enforce.
>
> * * * I have made it clear to the staff of the Antitrust Division that I am not saying that lightly. They are to take that seriously. If there are complaints in this area, they are to be investigated, worked up, recommendations made, in the same manner as a horizonal price fixing case or any other kind of case that we have.

Mr. Swain apprised the Committee that SBA and the Bureau of Competition of the Federal Trade Commission [FTC] were engaged in joint projects in an attempt to increase the enforcement agencies' sensitivity to small business antitrust issues and to ensure that small business antitrust concerns are actively considered:

> The key to effective enforcement in this area is the deterrence resulting from clear statements of the enforcement agencies that they are prepared to investigate and prosecute these kinds of cases. Only through a balanced effort by our tripartite (Justice, FTC and SBA) enforcement team can we assure ourselves that the freedom of the marketplace from anti-competitive conduct can continue to be a reality.

Mr. Leech testified in a dual capacity, as chairman of the Antitrust Committee of the National Association of Attorneys General and as Tennessee's principal law enforcement officer for antitrust matters. Mr. Leech informed the Committee that state attorneys general are actively involved in antitrust enforcement efforts—particularly in resale price maintenance cases—under the federal and state antitrust laws:

> In summary, the States contend that resale price maintenance facilities horizontal price fixing, both at the manufacturer level and at subsequent levels in the chain of distribution and raises prices paid by the consumer. Resale price maintenance protects inefficiency and causes the misallocation of resources in the marketplace. Resale price maintenance limits the free exercise of business judgment by independent distributors and dealers and inhibits the independent dealers ability to respond to immediate competitive demands of the local market. Resale price maintenance also eliminates the consumer's choice as to the prices that consumers are willing to pay for the dealer services, while at the same time giving no assurance to the consumer that the services presumed to follow from resale price maintenance will, indeed, be provided.

Monroe Milstein related a specific business experience to demonstrate the need for strong federal action to protect the small business owner:

> A major department store chain, with its headquarters in North Carolina, warned our suppliers' representatives that they did not want to see any of their merchandise in our Charlotte, North Carolina store. They were warned that they would be cut-off from their over 400 affiliated stores with a push of a button if they supplied us. In a few months, every major name brand was stripped from our Charlotte store and some of the suppliers stopped providing goods to all of our stores. To prevent this illegal cut-off of merchandise from our stores, we had to sue under the antitrust law.

Thomas Mauro, on behalf of the Small Business Legislative Council, provided the Committee with the rationale for the ongoing need to protect small business from anticompetitive business practices in the marketplace:

> The support for a continued existence of a viable and growing small business segment of our economy is not at all based on sentiment, a longing for the good old days of the one man and wife enterprise. Over the decades, public policy pronouncements and actions that are hospitable in intent by Congress and various administrations have been based on sound and most practical public policy considerations. Chief among these is the recognition that it is the smalls, not the bigs, that lead in the creation of new jobs. It is the smalls, not the bigs, that lead in innovations. And it is the small business unit upon which we must rely to provide the essential element of competition so as to pro-

> tect all of us against the abuses of monopoly power, the deliberate limiting of production to sustain ever higher prices, the divisions of markets or end customers, and even price fixing.

Antitrust policy and enforcement practices are a continuing interest of members of the Committee. It is imperative that they reflect the nation's prevailing antitrust laws so as to ensure a competitive environment for small businesses. It is extected that this issue will continue to be a focus of the Committee in the 99th Congress.

IMPACT OF GOVERNMENT COMPETITION ON SMALL BUSINESS

On June 6, 1984, the Committee held a hearing on S. 1746, the Freedom from Government Competition Act. The bill, sponsored by Sentor Rudman, is straight forward but extremely broad in purpose and application. The legislation requires that the Federal Government terminate any commercial activity in which it is engaged that can be carried on by private enterprise without substantially impairing essential activities of the government. In other words, the legislation would mandate that the government cease its production of goods and services when they can be secured in the competitive, non-government marketplace. This type of transfer of purchases from the public to the private sector is referred to as "privatization." According to the sponsors of the legislation, such a movement away from government production and toward acquisition through the private sector would benefit the government primarily because private procurement costs are significantly less than the cost of government production, and as a result substantial savings would be realized. In addition, because of the competition generated, the quality of the goods and services supplied to and employed by the government would increase substantially.

Steve H. Hanke, Professor of Applied Economics at Johns Hopkins University, testified at the hearing and outlined the dimensions of the problem:

> The first point is that waste and inefficiency always accompany public enterprise. This is true for the Federal Government, where the Grace Commission has indicated that we will waste $425 billion over the next 3 years; it is also true for the commercial activities carried on by the Federal Government. As you know, there are about 11,000 commercial operations within the Federal Government, and we have approximately 500,000 civil service employees engaged in those commercial functions, and the waste is rather staggering. The Grace Commission indicates that there is about $20 billion of activity annually in the commercial area and about $5 billion that is waste per year.

The growth of government competition with private business—contrary to privatization—has been particularly great in recent years. In 1967, the private sector provided approximately 60 percent of the government's goods and services, yet just three years ago, in 1981, only 40 percent—less than half—of the government's purposes were from private industry. A further measure, the gov-

ernment's portion of the nation's wealth, indicates that the ratio of private wealth (tangible assets excluding real estate) has decreased from approximately 6 to 1 in 1929 to about 3 to 1 in 1981.

A specific example of government competition with small businesses explored by the Committee was in the nursery and forestry industry. For most of this century the United States Forest Service has been in the business of raising trees primarily for the purpose of reforestation of federal lands. Currently, the Service produces about 150 million trees annually at its 13 nurseries around the country. While some of the necessary ancillary jobs—fumigating, weeding, harvesting, planting—are contracted out to private concerns, the Forest Service's cultivation of trees represents a huge government industry.

Robert H. Eastman, President of Western Maine Nurseries and an official with the American Association of Nurserymen [AAN], during testimony before the Committee, expressed some of his concerns:

> With proper planning and cooperation, the private sector could produce high-quality stock at a reduced cost to the Government when all cost factors are taken into consideration. If bloated Federal payrolls were cut and cost-effective management practices applied, Forest Service and other Federal agencies' budgets could be drastically cut. Unfortunately, very few policymakers have the foresight or political motivation to realize this.
>
> Examples of ineffective management of Federal nurseries are particularly obvious in the areas of capital expenditures and personnel. If a manager decides he needs a new piece of equipment, he just generally submits a requisition and most of the time it is granted. Poor planning seems to be an ongoing situation.

Congressional concern over government competition with private business has been evident for over half a century. As early as 1933 hearings were held on the subject, but it was not until the 1950s that the executive branch responded in an attempt to curb the growth of government intrusion into the marketplace. In 1955, the Bureau of the Budget, predecessor of the Office of Management and Budget [OMB], promulgated the following seemingly simple regulation:

> It is the general policy of the administration that the Federal Government will not start or carry on any commercial activity to provide a service or product for its own use if such product or service can be procured from private enterprise through ordinary business channels. Exceptions to this policy shall be made by the head of an agency only where it is clearly demonstrated in each case that it is not in the public interest to procure such product or service from private enterprise.

However, because of poor implementation and ignorance of the rule on the part of many federal procurement officials, this effort has been largely ineffective in reforming government buying practices. OMB Circular A–76, a document originally issued in 1966 and

revised as recently as 1983, is the current guideline to policies and procedures to be followed by federal agencies in determining whether specific commercial activities should be undertaken by the government or the private sector. Its objectives and general requirements are similar to the 1955 declaration, as are its failures to bring sound management of government procurement and greater privation.

Mr. Eastman, speaking for AAN, listed for the Committee two reasons that his organization saw for the ineffectiveness of Circular A-76:

> First, it is not perceived as a national priority either within the government or the private sector. A 1978 study by the General Accounting Office came to the same conclusion and recommended, as we do, the establishment of a national policy, endorsed and supported by both the legislative and executive branches. The national policy must be stable, understandable, and provide a balance among many conflicting national issues. (GAO Study PSAD 78-118, September 25, 1978).
>
> Second, there must be a presumption that activities should be contracted out and the burden placed on the agencies to demonstrate the clear and convincing need for in-house activity. A-76 does not create the burden, and our industry's experience will demonstrate that A-76 simply has too many ambiguous "loopholes" which allow agencies to justify in-house production.

Professor Hanke concurred in Mr. Eastman's statements and maintained that mere reform of the Circular was not the answer:

> The Grace Commission found that the A-76 Circular was highly unfair biased toward retaining commercial activities in the public sector, rather than producing them in the private sector * * * my experience, as a Senior Economist on President Reagan's Council of Economic Advisors in 1981-1982, strongly confirms the findings of the Grace Commission. One might conclude that all that is needed is a revised A-76 Circular and good implementation. This is not a valid conclusion. You simply cannot reform public enterprise in hopes of making it behave like private enterprise. This reform approach has never worked and cannot work, since politicians and bureaucrats don't face the bottom line of profits and losses as do private entrepreneurs.

A representative of the National Federation of Independent Business, Robert Lynch, president of Barton ATC Inc., of Murfreesboro, Tenn., went further, calling for the enactment of federal legislation to curb a substantial degree of government competition with the private sector:

> Congress has never passed a resolution or law to mandate reliance on the private sector for goods and services needed by the government. In recent years Congressional efforts to come to grips with contracting out has been stymied by repeated attempts by the Executive Branch to

> "study the issue" and by a growing controversy within Congress itself over the proper course of action to take, largely fueled by the concerns of public employee unions and by revelations of fraud and abuse within the procurement system. Such concerns have led to the introduction of bills ostensibly to treat the very real problem of year-end spending sprees and wasteful federal spending, but which would have had the practical effect of terminating contracting out and increasing in-house production of goods and services.

In endorsing S. 1746, Mr. Lynch cited a 1982 General Accounting Report which stated that:

> Without legislation, the executive branch can continue to unilaterally shift policy emphasis. Congressional action can preclude such unilateral shifts and establish a *stable* national policy. Such action would provide the necessary incentive for Federal agencies to implement the policy with assurance that it could not be changed again without Congressional approval.

UTILITIES

The diversification of public utility companies into unregulated markets has presented grave concerns to small business contractors. Since utility companies have been granted a regulated monopoly in the distribution of gas and electricity to the public, their ability to cross-subsidize retained earnings has enabled them to engage in the business of selling, installing and servicing energy-related appliances. Cross-subsidization occurs when a firm assigns costs attributable to an unregulated business to its regulated activity. Small business contractors argue that they have been placed at a disadvantage in the marketplace because cross-subsidization of costs attributable to unregulated activities allows utility companies to provide unregulated services at discount prices.

Because of these allegations, Chairman Weicker convened a hearing of the full Committee on November 3, 1983 to explore the impact that diversification by public utility companies is having on the plumbing, cooling and heating industries. Witnesses testifying before the Committee were Frank Swain, SBA Chief Counsel for Advocacy, Timothy Muris, Director of the Bureau of Competition of the Federal Trade Commission, Charles Gray, Assistant Counsel of the National Association of Regulatory Utility Commissioners, and representatives from trade associations and a public utility company.

Mr. Swain expressed concern with the diversification of utility companies into various marketing and servicing activities:

> Of course, I am not directly concerned with the merits of utility diversification, but rather with its impact on competition. The entrance of a government-regulated entity into the free market raises two general concerns. First, proper allocation of costs must be achieved between the utility and non-utility functions to avoid an improper ratepayer subsidy to the non-utility business. Any subsidy will ad-

versely affect the small business competitor who must bear all the costs of running a business. Second, even where the local regulatory body recognizes the problem of cost allocation, it is extremely difficult to properly allocate these costs, considering the meager resources and competing priorities of these agencies. This inadequacy is compounded by the almost complete inability of small business competitors to participate in the cost allocation proceedings before the regulatory agencies or the courts. Thus, I concluded that direct utility competition as a regulated entity raises great dangers to small business competition.

Mr. Muris explained how the ability of utility companies to allocate costs from their regulated to their unregulated services impacts upon competition in the marketplace:

> The traditional regulatory system entitles a utility to recover 'utility expenses' and earn a specified rate of return on investments included in its rate base. When a firm assigns costs attributable to an unregulated business to its regulated activity, cross-subsidization occurs. More important, the firm can set its price below its true costs in the unregulated market, to the detriment of competition. Thus, a utility may engage in predation, while passing the costs on to its energy customers. Such cross-subsidization could allow a utility to drive from the market even an efficient and well-managed independent that did not have access to similar subsidies.

Mr. Gray informed members of the Committee about what is done by Public Utility Commissions at the state level regarding complaints of alleged anticompetitive practices of regulated utilities of their unregulated subsidiaries:

> Most state commissions have the legal authority to investigate complaints concerning anticompetitive activities to the extent such activities impact upon these commissions' first responsibility—protection of ratepayers. Therefore, a complainant who alleges and successfully proves detrimental ratepayer impacts of such activities may well obtain relief from a State commission. Generally, however, State commissions do not have the legal authority to hear and decide pure antitrust disputes containing no clearcut ratepayer impacts, because they have not been provided such authority by their legislatures.

Small business contractors testified as to how their businesses have been affected by the diversification of public utility companies. Charles Kruse, President of General Heating and Air Conditioning, Inc. of Wisconsin, stated that his company is incapable of competing effectively with utility companies because of their ability to cross-subsidize unregulated services:

> In addition to our increased marketing efforts, we have also attempted to incorporate all possible efficiences into our operation. We maintain close labor control; have radio equipped and dispatched trucks; we keep our inventory to

a minimum and we attempt any other idea which might save us money. In spite of this, we find the utilities offering furnace and applicance service plans which are 25–40 percent lower than we can offer. For example, they provide annual clean and checks free using utility personnel. Our charges for a similar check would run at least $30. Other free services offered by WP&L include electric fuse replacements (including the cost of the fuse), new equipment checks and adjustments, the costs for conversion of customer owned equipment from bottled gas to natural gas, relighting, cleaning, and adjusting pilot lights. The utility uses those free services to get their foot in the door for other services they perform. By underwriting these "no cost" services with ratepayer funds, the utilities have at our expense achieved dominant control over the residential service market.

David Corcoran, Vice President of the American Supply Association, shared his experiences in the Massachusetts market with a local utility company:

Bay State Gas Company in Masachusetts rents hot water heaters to residential customers for $8.50 a month. The rental price includes installation and maintenance. Bay State offers commercial and industrial customers leasing and rental programs for small conversion burners, large heating equipment and burners, and water heating equipment. I have here with me a direct mail promotional piece mailed this year by Bay State to commercial and industrial customers. At several points in this package it is stated: "And thanks to our leasing and rental programs, your business can enjoy efficient gas heat with no capital investment."

The impact of Bay State's program is significant. In 1980, a supplier in Brockton, Massachusetts sold 300+ gas conversion burners. In 1981, Bay State began its rental program and his sales of gas conversion burners dropped to a total of 10—a loss of 290+ sales because of competition from Bay State.

William Harvey, President of Interstate Mechanical, Inc. and Vice President of the National Association of Plumbing, Heating and Cooling Contractors, expressed the need for immediate legislation prohibiting the diversification of public utility companies:

In addition, contractors face an even greater threat on the horizon. With the passage of the Energy Security Act in 1980, Congress created the Commercial and Apartment Conservation Service (CACS). Under this program and under regulations just released from the Department of Energy implementing it, there are *no* protections whatsoever against anticompetitive activity. As soon as state plans under the CACS go into effect, utilities will be required to provide energy auditing services to apartment buildings and small commercial enterprises. We expect to see a major increase in promotional practices in sales,

service, and installation by the utility companies throughout this country, as they take advantage of this federally provided marketing opportunity.

The viewpoint of public utility companies was provided by Thomas Morron, Vice President of Customer Services and Marketing of the Edison Electric Institute, regarding diversification:

> Utility participation in marketing activities that incorporate customer needs and utility goals provides many benefits to ratepayers and society. First, utility participation is likely to foster competitive markets for new products and services by increasing overall demand for the products or services that many contractors can share. Second, overall utility efficiency can be improved, resulting in lower rates. Finally, utilities can bring to this competitive marketplace expertise in electricity end-use which will help to ensure efficient use of resources. Overall, we believe that utility marketing activities, given regulatory protections which are already in place, provide a strong benefit to the customer.

During the 99th Congress, the Small Business Committee will monitor the impact diversification of public utility companies has on small business contractors. The Federal Trade Commission staff is currently conducting a study on this issue. Committee Members believe that the marketplace must remain competitive, and that small concerns not be hampered by illegal and noncompetitive acts.

Chapter VII. Small Business and the Family Farm

CREDIT AND THE SMALL FARM

Senator Pressler chaired a hearing on April 27, 1983 to examine credit problems facing the family farm which have made "the farm outlook the worst since the Great Depression." The session also served as an opportunity to assess ways in which the Federal Government can assist in alleviating the situtation. Moderated by Dr. Mark A. Edelman, Assistant Professor of Agriculture and Public Policy Economist at the University of South Dakota, the hearing was conducted in a workshop format in which opening statements from experts were followed by a period for discussion and questions.

Charles W. Shuman, Administrator of the Farmers Home Administration (FmHA), discussed the agency's efforts to provide credit to family farmers unable to obtain loans from conventional sources:

> The amount requested by this Administration for farm operating loans has been increased in each fiscal year for 4 years running, from $847 million in fiscal year 1981 to $1.2 billion in fiscal year 1982, to $1.5 billion in 1983, and a requested $1.8 billion in 1984.
>
> In addition to that, in mid-Apil of this year, just a few weeks ago or a few days ago, we transferred another $400 million from other Farmers Home Administration pro-

> grams to the farm operating loan fund when a shortage of funds become apparent in several States.

Mr. Shuman then outlined the agency's policy of continuing to service borrowers having trouble repaying loans due to circumstances beyond their control:

> Very briefly, we are extending credit on a case-by-case basis to farmers, even if they are delinquent, if they have kept their agreements with the Farmers Home Administration, are using acceptable management practices, have properly maintained security or the chattel and real estate that we have for security, and if they can show that any new loan they might receive from Farmers Home Administration can be repaid with interest out of the current year's receipts.

According to Mr. Shuman, a loan dropout rate of only 2.9 percent in 1983 is evidence that FmHA's lending policies are working. He explained that income, not credit, is at the root of the economic difficulties facing farmers and that the solutions lie with the success of the payment-in-kind [PIK] program and the current efforts being made to increase farm exports.

John A. Waits, Assistant Director for Congressional Affairs for the Farm Credit Administration, explained the role of this federal agency "that regulates, supervises, and examines the private cooperative borrower-owned lending institutions of the farm credit system." He painted a bleak picture of American agriculture:

> Suffering farmers are caught in an income squeeze between too many consecutive years of poor prices and rising production costs. This continued financial stress in the agricultural sector has forced the farm credit system to make some difficult decisions. These decisions are between continued forbearance and initiating actions that may ultimately lead to foreclosure.

Mr. Waits concurred with Mr. Shuman's comments concerning his agency's commitment to a policy of foreclosing on the borrower's property only as a very last resort after exhausting every possible loan servicing option. He mentioned, however, that there are instances in which foreclosure is the only way to halt steep losses to the farmer and the lending institution. Mr. Waits explained that in the wake of these foreclosures, a blanket moratorium on such actions would cause great harm to both the cooperative credit farm system and farmers, who would be forced to bear the increased costs and higher interest that would result.

Eugene Severens gave testimony on behalf of the Center for Rural Affairs, a non-profit organization in Nebraska which devotes its attention to farm credit problems by attempting to focus the attention of the FmHA on the needs of small and modest sized family farms, analyzing policies and practices of the farm credit system, representing FmHA borrowers and applicants in administrative appeals, and counseling farmers to head off potential credit problems before they arise.

Mr. Severens stated that the Center's analysis of FmHA's loan practices over the past 20 years has uncovered a disturbing trend

in the agency's loan portfolio and the type of borrower the agency serves.

> As agriculture has become more capital intensive and riskier, FmHA has gradually become less of a lender of last resort which provides economic opportunity to farmers of modest means, and more of a financial shock abosrber which helps buffer the risks of farm expansion for larger, more established farms.

Mr. Severens recommended that several changes in FmHA lending policies be implemented:

> First and foremost, FmHA should assist low-equity and beginning farmers to overcome the high start up costs involved in gaining entry to agriculture. Loans to these farmers should be carefully targetted, modest in size and adequately supervised. A secondary public purpose is the provision of loan assistance to family-size farm operations which have suffered from natural or economic disaster.

Paul R. Sacia, Assistant Director of Legislative Services for the National Farmers Union, commented on the Federal Government's effectiveness in administering farm credit policy and challenged the validity of claims by the United States Department of Agriculture [USDA] that it is doing everything within its power to assist financially distressed farmers during this rough time. He described the plight of the farmer caught in a low income, high production cost crunch and analyzed the administration of agriculture credit policy by the USDA:

> First, and in an action highly symbolic to farmers, the USDA chose not to spend one cent of the $600 million in economic emergency loan money Congress appropriated for Fiscal Year 1982, although the use of such funds would not have resulted in a significant expense, as repayment of outstanding loans largely finances this program.
>
> Equally disturbing was the Department's efforts in implementing the Limited Resource Operating Loan Program. It failed to use more than $121 million of operating loan money specifically earmarked for limited resource borrowers, meaning that only 54 percent of the appropriated $265 million was provided to qualified farmers. This represents the first time FmHA has not met Congress' established limited resource loan quota, and it resulted in approximately 4990 unserved borrowers.
>
> A third source of concern has been the Department's handling of the Emergency Disaster Loan Program. Senator Thomas Eagleton requested an opinion by the Comptroller General which resulted in confirming his belief that the FmHA "has followed and continues to follow a policy which illegally denies farmers access to the Emergency Disaster Loan Program."
>
> The Comptroller asserted that the Secretary for two years now has ignored the clear mandate under the Consolidated Farm and Rural Development Act that all farm-

ers who have suffered a minimum loss of 30 percent be eligible for disaster loans.

The USDA capriciously used a guideline limiting the availability of emergency loans to counties in which there was a 30 percent dollar loss to all cash crops grown in the county instead of basing availability of the programs on losses suffered by individual farmers. The Comptroller General opined, "He (the Agriculture Secretary) may not conduct the program under a policy which systematically excludes individual farmers made eligible by the statute."

And finally, FmHA recently was faced with 19 states running out of operating loan funds for FY 1983. With every sign pointing toward mounting demand for credit and critical times for thousands of farmers, the USDA rejected the idea of a supplemental appropriation or the use of any of the available $600 million in Economic Emergency Loan money and instead proposed to siphon funds from other vital programs.

Mr. Sacia concluded his testimony with an expression of high hopes for the passage of remedial legislation, then under consideration, to provide for loan rescheduling and deferral of payments for the beleaguered farmer capable of proving that he is a good manager, a victim of circumstances beyond his control, and has a reasonable chance of financial recovery.

Catherine Lerza, Associate Director of the Rural Coalition, described the plight of minority farmers and the decline of farming among American blacks:

> * * * black farmers have suffered both because they are black and because they are, in general, small farmers. The get-big or get-out era, fueled by cheap and plentiful credit, as we have heard today, has victimized blacks who cannot obtain the credit they need to get big in the first place, and who then suffer in a system that equates expansion with success and offers certain kinds of rewards to large firms—things you cannot get if you are small, even if you are efficient.

She offered the following recommendations to ease the burdens facing minority farmers:

> First, Congress should conduct oversight hearings on the extent to which the USDA policies and programs address the problems related to the loss of black-operated farmland.
>
> Second, the Farmers Home Administration should revise FmHA regulations to insure that farm loans are provided to those for whom Congress intended.
>
> Next, the Secretary of Agriculture should provide for the development and implementation of a coordinated departmentwide program designed to assign minority farmers. The Secretary of Agriculture should implement all USDA's civil rights policies and regulations. I think that is particularly important in light of the recent resignation of the head of the USDA's Office of Minority Affairs, the

> office that succeeded the OEO office at USDA. He was asked to leave because he was gutting all the civil rights regulations and procedures at USDA. It is to the Department's credit that he has been let go. However, I think there is a need to watch USDA carefully to make sure that that kind of thing does not happen again.
>
> Finally, the Farmers Home Administration, should require targets to be met at the county level, for minority participation in FmHA programs.

The farm credit policy workshop generated testimony containing facts an suggestions of signficant value to the Family Farm Subcommittee in its attempts to broaden its understanding of the nature and scope of the farm credit problem, the policies that shaped the current situation, and possible ways to improve it.

PAYMENT-IN-KIND

Small Business Committee agriculture hearing

Senator Pressler, Chairman of the Subcommittee on Small Business Family Farm, chaired a hearing on June 9, 1983, covering the impact of the Agricultural Department's Payment-In-Kind [PIK] Program on the agricultural support industries. Other members active in the hearing included Senators Baucus, Boschwitz, Nickles, and Nunn.

Testimony was heard from a panel of small businessmen, from the Deputy Assistant Secretary for Economics, U.S. Department of Agriculture, and from legislative and regulatory affairs representatives from various agricultural trade groups.

J. Dawson Ahalt, Deputy Assistant Secretary for Economics, USDA, Indicated widespread support for a continuing and even larger PIK Program in 1983 due to continuing depressed farm prices, as a result of back to back record harvests. He advised of substantial voluntary support among farmers for taking some 82 million acres, or one third of the country's base acreage, out of production in 1983. Mr. Ahalt extoled the benefit of a more extensive PIK Program as follows:

> The advantage of the payment-in-kind program is that, while it cuts back production, farmers, by receiving payment-in-kind for participating, will have their cash receipts pretty well maintained. That is going to improve their cash flow situation, which is absolutely necessary in order to get rural America and the input-supply industry back to a better setting. We think that is crucial if we are going to have a healthy agriculture in the future.

He acknowledged a general USDA and Industry awareness that reduced planting would bring a decline in demand for farm imputs (seed, fertilizer, equipment, repairs, etc.). However, it is projected that the general health of the total agriculture industry would improve as prices rise and cash flows increase. However, there would be near-term, short-run, negative impacts on the farm input industries. Areas cited for immediate impact were: Fertilizer—down 12 to 14 percent; Farm Machinery—down 2 to 3 percent; Pesticides—down 13 to 17 percent; Seed Producers and Retailers—down 13 to

17 percent; Energy—down 9 to 11 percent. Areas of farm input cited for nominal impact or actual improvement were: Employment—no major change expected; Warehouses and Elevators—no change; Truck and Rail Transportation—improvement expected due to major grain flows between producing regions.

A $3 billion increase in farm income during 1983 and 1984 due to PIK was projected to offset the negative effects of the program at the same time Mr. Ahalt projects farm prices will improve resulting in long-term health for the industry.

A general manager of a South Dakota grain cooperative expressed concern regarding potentially declining exports when addressing the Committee:

> While we must have supply management programs, we are concerned about the U.S. position in agricultural exports, the position of several other nations in their promotions of exports, the amount of foreign subsidies, and the efforts in credit programs, financing, and promotions that other exporting nations are using.
>
> While we need supply management programs, we need also to double our efforts in being creative and innovative in finding ways to increase our share of the exports.

A second representative of the agricultural cooperative industry from St. Paul, Minnesota, indicated that many small communities will begin to permanently lose their farm supply outlets due to declining demand caused by PIK. Additionally, this could lead to the closing of other businesses in the community as farmers shift their buying patterns.

Representatives from the fertilizer industry suggested a strong need for advanced planning in the PIK program in order that the industry may appropriately adjust its inventories. Additionally, regional planning for the removal of acreage from production must be held within parameters in order that the agricultural support industries may adequately supply farmers without bearing the burden of unsalable inventories due to PIK.

Representatives from the agricultural equipment industry expressed concern over declining sales due to reduced demand caused by PIK. Testimony indicated that PIK had also caused inventory problems among equipment manufacturers due to the uncertainty and short range planning of PIK. Additionally, a concern with increasing foreign competition for agricultural products and equipment was summarized in the following statement by a Minnesota farm equipment manufacturer:

> There is a great move, I think, afoot throughout the world to bring new lands into production. The countries that are doing this have suddenly or are just now really discovering the kind of technology and the kind of equipment and technology that can allow them to produce economic yields of grain crops, and they are finding that this is going to be a good source of self-sustenance and of even an export in some cases.

CANADIAN IMPORTS

Over the past several years, one of the more pressing problems for small family farms, especially those in the Northeast, has been the importation of Canadian agricultural products. These imports, which for a variety of reasons are sold more cheaply in U.S. markets than commodities produced in this country, are responsible for a significant decline in sales for small farmers in the Northeast. In an effort to document this problem and to suggest some remedial solutions to it, the Subcommittee on the Family Farm held two hearings, one in Washington, on June 29, 1983, and the other in Syracuse, N.Y. on September 9, 1983, on the impact of Canadian agricultural imports on the American small business community. Senator D'Amato chaired both sessions.

John H. Coulter, President of Smith-Coulter & Company and a witness at the September hearing, described how dramatically his business is affected:

> I ast March, after one of the most disastrous marketing seasons we have ever experienced in which we sold onions at less than one-half the cost of production, the onion market started to improve. Not for long! As soon as the market moved from $4 per hundredweight to $6 per hundredweight, Canadian onions began to appear in our markets * * * Our market immediately dropped back to $5 per hundredweight.

Unfortunately, the problem was not confined to the onion market. As Richard Corwith, a representative of the New York Farm Bureau, pointed out during the June 29, hearing:

> In the 1975–1976 production year, the United States shipped to Canada nine times the amount of potatoes that Canada shipped to the U.S. By 1979–1980 Canadian exports to the U.S. exceeded the quantity of potatoes shipped to Canada from the U.S. In 1980–1981 Canada again outstripped the United States in the amount exported.

A variety of explanations were offered as to why Canadian imports had succeeded in gaining access to U.S. markets. It was learned that the current exchange rate between the United States and Canada gave an overwhelming advantage to Canadian exports. However, Senator William S. Cohen, R-Me., a non-Committee member who took part in the hearings, pointed out that, "(while) the exchange differential gives Canadian producers an immediate 20 percent advantage, Canadian government programs and predatory pricing further aggravate the problem."

Senator D'Amato listed some of the actions taken by the Canadian government as a means of promoting Canadian exports. Low-interest loans and substantial transportation subsidies are provided to Canadian farmers, the Senator explained, and these create a market stabilization program which involve payments to farmers and finance a wide variety of export promotion and marketing programs.

As indicated earlier, the hearings also provided an opportunity to debate some of the proposed solutions to the problem of Canadian

imports. One proposal, put forth by Representative Benjamin A. Gilman, R-N.Y., was based on the assumption that the action taken by the Canadian government was clearly in violation of existing international trade law. Therefore, the Gilman proposal, which was eventually introduced as H.R. 3193, the Fresh Vegetable and Potato Trade Act of 1983, called for the creation of a floating commodity surtax on Canadian agricultural imports. This legislation, which was not acted on during the 98th Congress, would have required that this surtax be imposed in the event that certain Canadian commodities, as listed in the legislation, were being sold at below market prices in the U.S.

Another proposal, presented by Senator Cohen, was the Small Business and Agricultural Trade Remedies Act, S. 50. It also assumed that the practices of the Canadian government were in violation of the international trade laws. However, unlike the Gilman proposal, S. 50 was designed to encourage small farmers to seek assistance through federal agencies, such as the International Trade Commission (ITC), rather than through the imposition of a surtax. As introduced, the Cohen bill called for the establishment of special offices in the major international trade agencies of the U.S. government to deal with small businesses and small farmer concerns. Some of the provisions suggested by Senator Cohen were later incorporated as part of the H.R. 3398, the Miscellaneous Trade and Tariffs Act. This bill, which became Public Law 98-573 on October 30, 1984, created an office in the ITC which, given other language added to the bill, will provide special assistance to small businesses and small farmers who need advice on trade matters.

Senator D'Amato also discussed two other solutions during the hearings. The first would require the United States to declare that Canada was following a trade policy that was in contravention of existing international trade law and to unilaterally impose, in light of this policy, tariffs and/or quotas, on Canadian agricultural exports. However, as Senator D'Amato pointed out, a response of this kind would perhaps invite a correspondingly harsh reaction from the Canadian government that would impose hardship on other U.S. producers.

The second solution, which Senator D'Amato felt was equally unlikely to succeed, was a negotiated solution to the problem of Canadian imports. The trouble with this approach is that the overall trade between Canada and the U.S. is in balance. Therefore, any effort to aid the Northeastern small farmer would be brought at the price of other U.S. producers giving up their sales to Canada.

In any event, the Miscellaneous Trade and Tariff Act, increases the authority of the United States Trade Representative to negotiate an elimination of trade policies in other nations, such as Canada, where these policies are seen as contrary to existing international norms. This new authority, and the Congressional intent it represents, will hopefully lead to increased efforts on the part of the Trade Representative to eliminate unfair trade practices effecting U.S. producers, particularly small farmers.

NATURAL GAS

On April 5, 1984 Senator Pressler chaired a Family Farm Subcommittee hearing on the effects of rising natural gas prices on farmers and small businessmen.

The hearings were conducted at a time when natural gas prices were rising even as consumption was declining and allegations of a natural gas "glut" existed.

Testimony was received from J. Erich Evered, Administrator of the Energy Information Administration that from 1980 to 1983 the price paid by interstate pipelines for natural gas to be delivered to the Midwest had increased by 83 percent—about 7 percent less than the national average price increase for natural gas. This price increase took place even as the price for crude oil, price controls having been removed on that commodity in early 1981, continued to decline.

As Senator Pressler noted, natural gas is one of the critical cost variables in farm production:

> USDA estimates that over one-third of farmers' variable production costs for an acre of corn in the upper midwest are fertilizer, chemicals and drying costs. All of these costs are very dependent on natural gas prices.

The magnitude of these natural gas price increases was outlined by witness Mr. Charles Nevaril, Vice President of Terra Chemicals, Sioux City, Iowa:

> It (natural gas) is 80 percent of the cost of our product * * * in 8 years our cost has risen from somewhere just less than $1.50 to just over $4.00 at its maximum. It amounts to about $100 per ton of ammonia increase * * * (T)his, over the 8 year period, represents the potential, based on increased costs, of a cost increase of over 200 percent for that farmer.

Mr. Alan J. Giese, Vice President of Land O'Lakes, Inc. and Vice President of the National Council of Farmer Cooperatives, confirmed the effect of these price increases, but also noted that efforts to lower these costs through direct natural gas purchases from gas producers had been defeated:

> End users are the ultimate losers * * * Land O'Lakes costs for natural gas have risen 150 percent to over $17 million annually since 1979. Our attempts to lower our energy costs by negotiating contract carriage rights with natural gas pipeline companies have been greatly frustrated by the lack of cooperation on the part of those companies and by the rigidity of current regulations.

The effect on small businessmen has evidently been no less severe. Mr. S. D. Uhrmacher from Rapid City, South Dakota cited undocumented examples of natural gas price increases to several other small businesses in Western South Dakota:

> a doctor's clinic that spent $56 for natural gas in December 1981, now pays $100 for the same amount, a 79 percent increase in 26 months.

an automatic car wash spent $421 for natural gas in November 1981 now pays $673 for the same amount.

Mr. Uhrmacher also raised the one question central to understanding and resolving policy issues surrounding natural gas:

> What has happened to our long-established principle of supply and demand? How is it that a section of our economy has free rein to charge whatever price it decides for its product, without concern for free market competition.

Since the 1954 imposition of federal wellhead price controls on natural gas, free enterprise has played a nearly invisible role in the functioning of the natural gas marketplace. The first and most obvious effect of such price controls has been a signal sent to the marketplace encouraging energy consumption rather than energy conservation. In the words of Mr. Wayne Fox, Assistant Vice President of Montana-Dakota Utilities Co.:

> Utilizing a cost-based methodology, natural gas prices were held at artificial levels far below that of other conventional energy sources well into the late 1970's. As a result, natural gas was in great demand for industrial usage as well as for small business and residential. Because natural gas was cheap, there was little incentive to use this premium fuel efficiently.

This and other similar results of federal intervention in the marketplace were predictable and doubtless would have been substantially ignored had it not been for the OPEC embargo and subsequent events that resulted in the "energy crisis." Thus, throughout the mid-1970's as oil prices soared, natural gas prices were artificially restrained. This resulted not only in wasting gas reserves, but in insulating gas consumers from appropriate marketplace signals. Just as significantly, intrastate gas supplies—not under federal price controls—followed marketplace demand and were rapidly withdrawn from the interstate, price-controlled marketplace. Thereafter, large segments of the country, dependent upon interstate supplies, began to experience curtailments with the result that factories were frequently closed while other institutions began to operate on restricted hours.

The result of federal price controls led not to a solution but to a rapid worsening of the problem. Therefore, Congress acted, and with the passage of the Natural Gas Policy Act of 1978, the stage was set for further marketplace distortions ultimately leading to the necessity for Congressional hearings. Under the NGPA, natural gas ceased to be a single commodity: it was legislativley subdivided into 27 separate categories each with a varying price and schedule for permissable price increases, and, in some cases, no price controls whatever.

The unique scheme set in motion yet another series of federally-distorted marketplace actions. First, because so-called "Deep Gas" (drilled to depths of 15,000 feet or deeper), had been removed from price controls, new supplies were first sought from this area. Although this deep gas began to provide badly needed new supplies, it did so only at a price 4 or 5 times higher than other price-controlled categories of gas.

Second, and again in response to recent supply curtailments as well as the certainty of a new regulatory scheme, interstate pipelines entered into gas purchase contracts for the decontrolled deep gas. Mr. Evered testified that these contracts assured rising prices no matter what the demand levels might be or might become:

> At the same time, interstate pipelines, with the motivation to secure more reserves * * * bid up the price of natural gas. In addition, when price could not be a factor in negotiations—that is, the going price was at the allowable ceiling—they sweetened the deal by incorporating or offering in natural gas contracts some very liberal provisions favorable to producers, including high take-or-pay provisions and indefinite price escalators in the event of decontrol.
>
> This incentive of higher prices and presumably guaranteed purchases encouraged producers to go out and find a tremendous amount of gas. We have right now an excess of deliverability of gas, but we do not, I would caution the Chairman, have an excess of gas reserves. While we have arrested the pace of decline in reserves, they are not going up.

According to Mr. Evered, by 1982–1983, the natural gas market could be fairly characterized as one having falling demand by the end user, inadequate reserves with excess present deliverability, and rising prices. By contrast, the decontrolled crude oil market responded to falling end user demand with falling prices and stable deliverability and reserves. Mr. Evered concluded that the causes behind the current disorder in the natural gas market are all but transparent:

> I would say that the current problems in the market are largely the result of three decades of Federal regulation of gas prices at the wellhead, and the response by pipelines, distributors, consumers, producers, and all parties in the natural gas market to that legacy of regulation and operating in the environment of Federal price regulation.

And, although Senator Pressler and others introduced legislation, Congress was unable to pass any natural gas legislation during the 98th Congress.

CORPORATE BUYOUTS OF FAMILY FARMS

During the Second Session of the 98th Congress, the Committee's Subcommittee on Small Business: the Family Farm studied a comparatively recent phenomenon in American agriculture and an issue of great concern to many farmers: corporate acquisitions of heavily-indebted family farms.

The extraordianry productivity realized by our nation's farmers—an abundance that feeds both the United States and the world—is largely a result of ownership and management of small, often family-owned, farms. Individual ownership has proven to provide the best stewardship of the land and the greatest harvest. Yet, the past half century has witnessed an alarming trend. Since 1935, the total number of farms in the nation has decreased from 6.8 mil-

lion to 2.4 million in 1978. Further, the percentage of farm land owned by non-farm entities has increased from 35 to 87 during that same period. The small family farm is becoming increasingly scarce, and the recent increase in instances of corporate acquisitions of family farms is a matter of great concern.

Specifically, the Subcommittee's attention was caught by the controversy surrounding the activities of one particular corporate entity, Consolidated Family Farms of Chicago, Illinois [CFF]. This group had approached Midwestern farmers who were in need of capital and offered to assume all of their debts in return for a deed to the farm land. Under the plan, a farmer would receive shares in a limited partnership equal to 90 percent of the equity in his farm. The farmer would then have the option of cash renting the land back from the CFF at a rate of 7 percent of the value of the land. The investors would hold a lien on any crops produced to assure payment of rent.

On August 1, the Subcommittee, chaired by Senator Pressler, conducted a hearing to explore the impact on individual farmers of entering into such an agreement, the extent to which such limited partnerships are being established across the country, and the long-term implications of such a trend on American agriculture. In particular, Senator Pressler wanted to examine the Consolidated Family Farm partnership offering which had been widely criticized by organized farm groups, and the attorneys general of Kansas and Iowa which sought to limit this type of activity in their states as being a violation of their respective state laws.

Richard C. Hollerud, a General Partner of CFF, appeared before the Subcommittee and described in detail the terms of the partnership agreement and how it would operate:

> After an initial appraisal of a farm each farmer and creditor will then be free to decide whether or not they wish to participate in the program and partnership units will be allocated among those who elect to participate. No farms will be purchased since the entire partnership will be formed through an exchange offer. Thereafter, from time to time, a property may be sold or purchased but this is not the primary focus of the program.
>
> All farmers contributing property will be offered the opportunity to rent their farm, to continue to live in the same house they have been living in and to work the same land that they and their families have always worked. These farmers will not be employed by Consolidated Family Farms but will remain as independent entrepreneurs. The means of their production, namely, the land they till, will not be completely separated from their ownership. Rather, they will continue to own an interest indirectly through the partnership in their land as well as in all the other lands contributed to the partnership. Thus, they gain diversification without sacrificing equitable ownership.
>
> The rent for each property will be initially established based on the exchange value of the property 7½ percent on land value, $.15 per bushel of capacity on grain storage

facilities and 6 percent to 8 percent on other buildings. This rent replaces the principal, interest, taxes and insurance which they otherwise would be obligated to pay and restores to farmers a measure of profitability which high interest rates, low commodity prices, unsuccessful Government programs and the ravages of cost inflation and asset deflation have sought to deprive them. Moreover, because farmers will receive units, i.e., profit participation in the partnership, it is anticipated that they will enjoy an after-tax annual yield on their units approximately equal to 6 percent. (The difference between the annual rent and annual yield will satisfy management fees and other expenses). Thus, the farmer contributing a debt free farm having an appraised and agreed exchange value aggregating $1,000,000 will be entitled to rent that farm for $75,000 a year and is anticipated to receive a yield of about $54,000 a year. (This is computed by subtracting from the $1,000,000 value an initial dilution of 10 percent to cover all commissions, startup costs and interest of the organizers multiplied by 6 percent). Obviously, these projections could vary based upon the property mix, the amount of depreciation and other factors, but they represent our current best estimate of projected results.

For the debt-burdened farmers owning the same farm (for example, 500 acres at $2,000 per acre with a first mortgage of $250,000 and additional indebtedness of $500,000), in all likelihood that farm is experiencing negative cash flow. That is, each year in return for his labor, the farmer will owe more at the end of the year than at the beginning. Thus, without the help of our progam, the farmer faces the bleak alternatives of foreclosure, distress sale or personal bankruptcy. If the farmers and holders of the subordinate debt elect to participate in the program, each would receive interests in the partnership in exchange for their respective indebtedness and real property interest. Thus, the farmers may receive units having an exchange value, after initial dilution and commissions of approximately $150,000. There is no assurance that these units will trade in the public market at this price since the price may be higher or lower assuming a trading market is established. These units would have an annual after-tax yield of approximately $9,000 per year. And the farmer would be entitled to lease back his farm and continue to operate his family farm.

Thus, the small farmer would be relieved of debt service and expenses that continually eroded his financial position, his equity would be preserved and maintained, his farm operation could once again become profitable and he would enjoy a yield on his partnership interest and have the benefits of diversification. The subordinate creditors, often local banks, fertilizer and chemical dealers, and other suppliers (many of which are small businesses) would receive equity securities in lieu of what may otherwise have been a bad debt. Thus, the benefits of the pro-

> gram would extend to many businesses in the local farm communities and would be a source of stimulation to what otherwise are often stagnant economies.

The National Farmers Organization, the National Grange, and the National Farmers Union [NFU] all testified before the Subcommittee and were unified in their opposition to buyout schemes such as that proposed by CFF. Paul R. Sacia of the NFU, was concerned that this solution would provide little net new capital for the farming industry. He maintained that CFF's intention to purchase land at the lowest possible price would also push down farm prices generally, hurting all other farmers severely. In addition, the CFF corporate entity would circumvent and exclude local farm-service businesses in favor of large volume, regional or national purchasing and marketing firms, further damaging the local economies. Finally, Mr. Sacia believed that individual farmers would stand to suffer from several of the provisions of the partnership contract, including the undetermined value of the security received in exchange for the farm land, the unspecified duration of the rental agreement, and the lack of a "buy-back" provision.

Jeffery S. Southard, Deputy Attorney General of the State of Kansas, appeared before the Subcommittee to explain why the Attorney General of Kansas had initiated litigation to prevent CFF from operating in his state. While an initial investigation had revealed no specific violations of the state's security statutes, Mr. Southard reported that the state had several fundamental concerns with CFF's activity. These included the lack and insufficiency of disclosure information about CFF in its preliminary prospectus; the manner in which existing debt was to be handled when no new capital was provided the farmer; the trading of the partnership's securities when many states prohibit lending institutions from investing in such speculative certificates; and the status of a farmer's machinery and equipment under such an agreement. Mr. Southard concluded that:

> Behind the facade of the lengthy and detailed prospectus, CFF appears to be an arrangement by which control of agricultural land is obtained by outside investors, who are called upon to actually invest very little of their own capital. Farmers, on the other hand, are required to turn over their real property and assets, and effectively become 20th century share-croppers, paying a cash rent to farm what was previously their own land. The plan is fuzzy as to how existing debt will be removed, and fails to focus on the ongoing credit needs of the men and women who are engaged in agriculture at the family farm level. While a number of individuals and entities would profit by the numerous transactions which this plan proposes, the farmers would appear to be receiving the least after contributing the most. In the view of Attorney General Stephan, farmers in Kansas, as well as elsewhere, will better be served through realistic and concrete programs which address the underlying problems of capital formation and acquisition which farmers face, rather than by elaborate management

schemes which continue to place almost all of the burden upon the back of the farmer.

On August 7, Senator Pressler, as a result of the issues raised during the Subcommittee's hearing, requested that the Security and Exchange Commission [SEC] postpone approval of the CFF's application for registration. He also announced that following the hearing, CFF had agreed to resubmit its application to the SEC with changes that would provide farmers and other limited partners greater control of the management of the partnership and to assure that the rights of individual farmers would be protected. CFF further agreed that the Subcommittee would be notified if and when a new application was submitted to the SEC.

The past year was an increasingly difficult time for American agriculture. The ever-rising cost of borrowing, the limitations of federal subsidies, and the shrinking export opportunities among other factors—have crippled some sectors of the agricultural community and have proven to be most disabling to the small farm which is often family owned. The Family Farm Subcommittee, chaired by Senator Pressler, has been aggressive in scrutinizing the issues affecting small farmers in an effort to ease their plight.

Chapter VIII. Small Business and Exporting

American export sales have not improved greatly since 1982, despite the general domestic economic recovery in the U.S. The dollar remains very strong abroad, the U.S. trade deficit continues to grow, and both large and small exporters continue to suffer. In seeking to help remedy this situation and increase exporting opportunities for small business, the Committee has been active in a number of areas. In particular, the Subcommittee on Export Promotion, chaired by Senator Boschwitz, has employed as its blueprint for action the recommendations made by small exporters that were elicited as part of the Subcommittee's 1982 study entitled Obstacles to Exporting.

Participants in the study made a variety of suggestions as to how prevailing obstacles to exporting could be overcome, including greater cooperation between the various government agencies involved in assisting exporters and a reduction of existing export regulations. As a follow-up to the publication of this study, Senator Gorton held a field hearing in Seattle, Washington, on February 11, 1983 on the subject of obstacles to small business exports. At this hearing, various witnesses reiterated some of the concerns expressed in the earlier Small Business Committee study. John Fluke, Chairman and Chief Executive Officer of the Fluke Manufacturing Company of Everett, Washington mentioned, among other things, the burden placed on his business by the complex federal export licensing laws. As Mr. Fluke said:

> Our meeting here today can do little to change the value of the dollar on world markets. However, this committee can work to save exporters millions of dollars in expenses and gain us millions of dollars in expenses and gain us millions of dollars in sales, by simplifying export licensing

procedures, by eliminating the need for many licenses, and by expediting the license review process.

Other witnesses echoed the sentiments expressed by Harley Bird, the President of Sphere Solid Waste, Inc. of Seattle, Washington. According to Mr. Bird, two of the most important barriers to exporting by small businesses were a lack of timely and relevant access to information regarding trade opportunities, and a lack of aggressive promotion techniques to increase the sale of U.S. goods in foreign markets.

While the hearing record reflects some disagreement of what all of the obstacles to small business exports are, there is at the same time a clear consensus that the most important of these obstacles is the lack of adequate financing for small exporters. This is true not only in terms of financing the sales that these exporters hope to make, but also for the marketing and working capital necessary to attract foreign buyers.

EXPORT-IMPORT BANK FINANCING

During the 98th Congress, the Subcommittee on Export Promotion concentrated on exploring ways to bring about an increase in the amount of financing available to both current, and potential, small business exporters. The largest public sector source of such financing is the Export-Import Bank of the United States [Ex-Im Bank]. One problem with the Ex-Im Bank, however, has been its bias toward lending to large, rather than small, exporters. Through a series of hearings, and a major legislative initiative, the Subcommittee attempted to, and was successful in, increasing the share of the Ex-Im Bank's resources granted to small businesses.

On April 7, 1983, the Export Promotion Subcommittee held its first hearing to begin its examination of the Ex-Im Bank activities and their impact on small business exporting. The tone for the hearing was set by Senator Huddleston, the panel's then Ranking Minority Member, when he pointed out that over 11,000 non-exporting manufacturers were, according to the GAO, "* * * capable of exporting and could probably be induced to try exporting if properly approached and assisted." The value of increasing exports of at least a segment of the current non-exporting manufacturers would total about $4 billion annually, said Senator Huddleston.

Senator Boschwitz questioned William Draper, President of the Ex-Im Bank, and the primary witness at the hearing, about the apparent lack of effort on the part of the Bank to involve non-exporting small businesses. Senator Boschwitz pointed out that while a fairly large percentage of the total number of Ex-Im Bank authorizations were being granted to small exporters, only 3% of the total volume of these authorizations were allocated to them.

Mr. Draper responded to the Senator's questions by asserting that the 3 percent figure did not include the number of small businesses that were indirectly involved in exporting because they were subcontractors of the larger firms that got the bulk of Ex-Im authorizations. Mr. Draper also discussed in detail the $100 million small manufacturers program, the small business hotline operated by the Bank, and other information and marketing programs de-

signed to improve the Bank's performance in assisting small businesses.

Despite Mr. Draper's defense of Ex-Im's performance, most of the small business persons appearing at the hearing expressed the view that the Bank should do more. As Evan Werling, Vice President for Finance of the French Oil Company of Piqua, Ohio, said, "* * * (it)'s no wonder that small to medium-sized manufacturers are less than enthusiastic about export sales when they cannot be assured of an edequate supply of consistently competitive export financing."

Similar sentiments were expressed by Douglas Swenson, Vice President and Treasurer of MITCO International, a Minnesota-based multinational trading company. In referring to the regulation then in existence requiring the Ex-Im Bank to, "Give due recognition to the * * * interests of small businesses * * *," Swenson said:

> Despite the foregoing requirement, it does not appear that Ex-Im Bank had done all that it could to assist small business exports. And indeed, much more could be done by the organization under its current Act to help small and new-to-market, or new-to-export firms.

Finally, testimony was heard regarding a Department of Commerce report which concluded that an increase in availability of government financing for small exporters would not only expand the sales from these exporters, but would enable these export operations to becomes self-sustaining.

As a follow-up to the April hearing, Senator Boschwitz chaired a field hearing in St. Paul, MN., on September 12, 1983, on then-current atttempts by the Ex-Im Bank to finance small business exports. Senator Boschwitz's assessement of the Bank's performance was quite candid:

> To put is bluntly, the Ex-Im track record is dismal. In 1982, only 2.8% of Ex-Im's total available financing went to small businesses. And during the past five years, small businesses received only 3.4% of Ex-Im Bank's total financing.

The Senator's views were shared by the various witnesses that participated in the hearing. For example, Daniel G. Brian, Senior Vice President of a bank that financed small business exports in Minnesota, said, "(historically), it has been cumbersome and expensive to work with Ex-Im Bank * * *"

Evie Sprada, President of the Minnesota World Trade Association of Edina, Minnesota, said:

> A quick survey of our members revealed their experiences with Ex-Im Bank are relatively limited * * * It has been perceived that Ex-Im Bank has not been interested in these small transactions * * * These manufacturers have been left out in the cold * * * at substantial risk to their present and future growth prospects * * *

EX-IM SMALL BUSINESS SET-ASIDE

In addition to exploring the Bank's efforts in the area of small business exports, another important purpose of the hearing was to discusss an amendment, offered by Senator Boschwitz, to the then-pending reauthorization bill for the Ex-Im Bank.

As described during that session, the Boschwitz amendment consisted of four major parts:

1. A requirement that Ex-Im set aside a given percentage of its total direct loan, loan guarantee, and insurance authority for small businesses. As drafted, the amendment called for a set-aside of 10 percent in fiscal year 1984, and an increase of one percentage point every fiscal year thereafter, until the set-aside reached a maximum, permanent, level of 15 percent in 1989. This set-aside would have increased small business export financing by over $7 billion over the years 1984–1989;

2. Establishment of a program that would provide lines of credit or guarantees to consortia of local banks, export trading companies, small business investment companies, state financing companies, and/or export financing cooperatives;

3. A requirement that the Bank promote their efforts in cooperation with other agencies of the Federal Government, including the Department of Commerce, and the Small Business Administration. Given the historic difficulties that arise from a lack of coordination between government agencies, this provision was viewed as an integral part of the entire Boschwitz amendment;

4. A report to be submitted annually to Congress by the Bank on the implementation of the amendment's provisions.

Shortly after the September hearing, the Boschwitz amendment was offered on the floor of the Senate as an amendment to S. 869, the Export-Import Bank Act of 1983. Most of the provisions of the amendment, as described during the September hearing, were adopted, although the set-aside percentages were reduced to 6 percent of all Ex-Im authority in fiscal year 1984, 8 percent in 1985, and 10 percent thereafter. This legislation, of which the Boschwitz amendment was a part, was enacted as part of the Supplemental Appropriations bill for 1984, which became Public Law 98–181.

OVERSIGHT OF EX-IM BANK SMALL BUSINESS SET-ASIDE

On May 10, 1984, the Export Promotion Subcommittee, chaired by Senator Boschwitz, met to review the progress of the Ex-Im Bank in its implementation of the Boschwitz amendment. The primary witness at the hearing was again Ex-Im Bank Chairman William Draper. In his opening statement, Mr. Draper declared:

> I am pleased to report that we have made significant progress * * * I would also like to add that the progress we have made would not have been possible without the valuable input and close cooperation we have received from the Department of Commerce and the State agencies. We also want to thank you, Mr. Chairman, for the prods that you have given us to do more for small businesses.

The progress that the Bank felt that had been made was evidenced in its record of activities—at the time of the hearing over

20 percent of total Bank authority had gone to small businesses. In addition, there had been close cooperation between the Bank and other federal agencies, and the Bank was prepared to launch a four-state marketing program that was designed to interest more exporters and more regional bankers in the program. It was also seen as a first step toward a possible increase in the loans made available by the Bank to a consortia of bankers and traders. Finally, Ex-Im Bank representatives pointed to the number of seminars the Bank had conducted across the country to get small businesses and regional lending agencies interested in Bank programs, as an indicatin of the progress they had made in implementing the Boschwitz amendment.

Despite the greatly improved track record presented by the Bank, several questions were raised at the hearing. First, it was clear from the figures provided to the Subcommittee that a disproportionate share of the total authority set aside for small businesses was in the form of insurance, and not actual financing or financial guarantees. Since financing, and not insurance, is the major obstacle to small business exporting, there was some discussion of redefining the set-aside solely in terms of Ex-Im Bank loans, or loan guarantees, and not loans, loan guarantees, and insurance commitments. Further, while acknowledging the Bank's effort to increase the participation of small businesses, various witnesses, such as Duc Lam, the Executive Director of the Minnesota Export Financing Authority, pointed out what they felt were some major shortcomings in the Bank approach. In particular, Mr. Lam cited a reluctance to rely on the State financing agencies:

> Ex-Im Bank's proposal is a step in the right direction. However, we believe there are some major shortcomings in the proposal that could spell failure for the pilot program * * * Minnesota believes that Ex-Im Bank and FCIA could improve their programs and increase the probability of success if they took advantage of the tools available to them * * * Minnesota has an agency that can respond to Ex-Im and FCIA's needs.

Other witnesses questioned the ability of the Ex-Im Bank to market its own programs. Ivan Elmer, Director of Small Business Programs for the U.S. Chamber of Commerce said, "* * * neither the Ex-Im Bank, nor any other federal agency can sell exporting to small businesses as well as private salesmen. * * *"

The Subcommittee determined by the end of the hearing that the Bank had improved its efforts at increasing financing for small business exports, but advised that it would continue to monitor the implementation of the Boschwitz amendment in light of the questions raised.

Since that hearing, the Bank has continued to emphasize its small business programs, and has moved to implement its marketing program in the States of Wisconsin, Illinois, Michigan, and Minnesota. Committee staff has met on a number of occasions to review the progress of the Bank's efforts, which should continue to show substantive results.

EX-IM BANK/SBA JOINT MARKETING PROGRAM

On August 30, 1984, the Ex-Im Bank and SBA announced the establishment of a joint program to guarantee credit lines of $200,000 to $1 million for small exporters. While SBA's Export Revolving Line of Credit [ERLC] program and the Bank's Working Capital Guarantee program will continue to be offered separately by the two agencies, the programs may be combined to support the same transaction. The new cooperative agreement is the clearest indication, to date, of the Ex-Im Bank's intention to carry out that section of the Boschwitz amendment requiring the Bank to integrate its efforts with other government agencies. The Bank's efforts to increase the percentage of their resources set aside for small businesses also appeared to be successful.

However, the bias in the set-aside toward insurance as opposed to financing commitments, raised some question as to whether the Bank has actually committed, in absolute numbers, the amount of financing envisioned by the original Boschwitz amendment. In addition, a more basic question remained as to whether actual increased export sales from small businesses occurred as a result of the increased financing provided by the Bank. In this regard, the Committee intends to review, with great care, the Bank's implementation of that part of the Boschwitz amendment which encourages the Bank to promote lines of credit, or guarantees to consortia of various types, including local banks and similar organizations.

OTHER ISSUES

Although Ex-Im Bank financing was the major focus of the Subcommittee's efforts in the 98th Congress, several other important issues were examined.

The Subcommittee conducted oversight operations over the Small Business Export Promotion Grant Program administered by the Department of Commerce. Under this program, which was created in the 96th Congress, grants were given to encourage the establishment of self-sustaining small business international marketing programs which were, in turn, to have provided export counseling, assistance and services to small businesses. In August 1984, Committe staff made on-sight inspections of past and present grantees in Preparation for the upcoming Committee report on the Export Promotion program.

The Subcommittee was also been active in working with Export Administration officials in order to eliminate the delays often associated with applications for export licenses. These delays, which the Administration has worked to reduce, often mean the loss of existing, or future contracts for small business abroad. Should these delays persist, this issue may form the basis for a hearing or the introduction of remedial legislation in the 99th Congress.

The Subcommittee also participated in the passage of H.R. 3398, the Omnibus Trade and Tariff Act of 1984. This legislation, which was designed to reduce the obstacles to exporting presented by unfair trade practices abroad, and which also contains a number of provisions crucial to specific small businesses in this country, was signed into law by the President on October 30, 1984, becoming Public Law 98-573.

Finally, the current high valuation of the U.S. Dollar greatly inhibits the ability of small businesses to sell abroad. As indicated earlier in this report, a high-priced dollar, which increases the relative price of U.S. goods abroad, is a direct result of current U.S. fiscal and monetary policy. While it is beyond the capacity of the Subcommittee to make any direct changes in this policy, the Subcommittee will continue to play an advocacy role in relation to the U.S. economic policy as it affects small business exports.

Chapter IX. Economic Development

In recent years, the Committee has continually stressed the crucial role small businesses play in creating jobs and stimulating our nation's economy. This role is borne out by the President's 1984 Report on the State of Small Business. The following statistics cited in the Report illustrate the contributions of small enterprise to our economic growth:

> In 1958–1977, during a period of expansion for most major industries, more jobs were created by small businesses than by major corporations.
>
> Between 1980 and 1982, small businesses generated all of the 984,000 net new jobs in the nation. Small business produced 2,650,000 new jobs which more than off-set the 1,664,000 lost by larger businesses.
>
> The six major industries for which small and large business-dominated sectors can be identified, small business-dominated industries registered a net employment gain of 26 percent from September 1982 to September 1983. Large business-dominated sectors showed an employment gain of only 1.2 percent.

The Committee has tried to assist the small business sector to further generate jobs and economic development by funding programs are designed to provide affordable, long-term capital to help small businesses to expand and grow. The specific programs which have been the focus of the Committee's attention are SBA's sections 501, 502 and 503 Economic Development programs and tax exempt Industrial Development Bonds (IDB's), authorized under Section 103(b) of the Internal Revenue Code of 1954.

SECTION 503 CERTIFIED DEVELOPMENT COMPANY [CDC] LOAN PROGRAM

The Small Business Administration's 503 Certified Development Company Loan Program was enacted July 2, 1980, as a part of Public Law 96–302. Under the section 503 program, SBA is authorized to guarantee debentures issued by certified development companies [CDC's] to finance the purchase of land, plant and equipment, i.e., "bricks and mortar" loans, to healthy small businesses for planned expansion. By law, section 503 loans can be for as much as 50 percent of a project's cost, up to a maximum of $500,000. The other 50 percent must come from the private sector, usually the small business concern and a bank. Maturities on these loans can be for up to 25 years.

The purpose of the program is to leverage the SBA guarantee to encourage the private sector to make long-term capital available to small businesses on reasonable terms in order to create and retain jobs in local communities. Section 503 of the Small Business Invest-

ment Act was designed to make SBA an active partner with state and local governments and the private sector, encouraging banks to make long-term loans available to small enterprises under favorable terms. Without federal guarantee programs such as section 503, banks are often reluctant to make such loans to small companies. The creation of a substantial number of new jobs is a requirement before any such loan can be made under the Section 503 program.

SBA began certifying CDC's in late 1980. As of December 31, 1984, over 540 CDC's had been certified, and more than 2300 projects had been financed. Approximately, 100,000 jobs have been created or retained as a result of financings made through the program. According to SBA, the vast majority of the jobs created have been permanent ones in manufacturing and wholesale/retail industries. The 503 program has emerged as one of the Federal Government's major economic development programs. The program is clearly fulfilling the role envisioned by Senators Weicker and Nunn, the original Senate co-sponsors of the program, by providing long-term loans, the toughest to obtain, to healthy small firms, boosting local economies and the job market.

During the 98th Congress, the Committee continued its oversight of the 503 program. Since its inception, the panel has supported a steady growth in the 503 program, and as more companies have been certified, Congress has authorized and appropriated the necessary funds to meet the increasing demand. In fiscal year 1981, funds were appropriated to operate the program at a level of $150 million; in fiscal year 1982 at a $250 million level; in fiscal year 1983 at a $350 million; in fiscal year 1984 at a $450 million; and in fiscal year 1985, at a $450 million level.

In the early years, the SBA used far less than the appropriated amount. For example, although the loan guarantee authority for the program was $250 million for fiscal year 1982, only $99 million of that authority was actually used. In fiscal year 1984, however, SBA used $348.2 million of the amount authorized. While the early shortfall in program activity may have been a result of the program just getting started, the Committee has also been concerned about Administration policies which thwarted the program's growh. One such Administration policy concerned the prohibition of the use of tax-exempt financing in conjunction with the 503 guaranteed loan.

S. 499

When the Section 503 program was enacted, Congress intended that the program work in conjunction with the local community's ability to provide its part of the financing through the use of industrial development bonds.

The Conference Report accompanying Public Law 96-302 stated:

> SBA should not disapprove the guarantee of any debenture, or any loan made with the proceeds of a debenture issue, solely because the proceeds would be used in a project whose other sources of financing include, or are collateralized by, tax-exempt industrial revenue or development bonds.

The Conferees recognized that industrial development bonds [IDB's] have been one of the most valuable tools for local economic development. By linking IDBs with 503 debentures, small businesses could get better terms, i.e. more favorable interest rates than through conventional financing.

Consistent with the Conference language, SBA regulation, 13 CFR Part 108.503–4(c), states:

> SBA may participate in projects whose other source of financing include or are collaterlized by tax-exempt obligations. Further, loans made with the proceeds of 503 debentures may be subordinated to such obligations.

Later, SBA's instructions to the field contradicted the regulations. These instructions stated that "SBA may not participate in projects whose other source of financing include, or are collateralized by, tax-exempt obligations." (Standard Operation Procedure Manual 50–22 para. 23.) The Committee's investigation disclosed that SBA had adopted this policy, contravening Congressional intent and their own regulations, at the direction of the Office of Management and Budget [OMB] in coordination with the Treasury Department. During executive branch consideration of SBA's Fiscal Year 1982 budget, an OMB memorandum response to SBA's request under the heading of significant policy determinations stated:

> Continuation of the Certified Development Company Debentures program, provided that SBA develops procedures—satisfactory to OMB and Treasury—that preclude indirect guarantees of tax-exempt securities.

SBA, therefore, in complete disregard of clearly expressed congressional intent, had refused to guarantee or participate in 503 loans for projects in which industrial development bond financing is used. This action had been taken as part of the Administration's overall policy of discouraging the use of small-issue industrial development bonds.

During oversight hearings on February 17 and September 28, 1982, (97th Congress), chaired by Senator Alphonse D'Amato, chairman of the Rural and Urban Economic Development Subcommittee, it became clear that because of the Administration's policy had not permitted federal participation in financing of projects where a portion of the project is financed through tax obligations, the utilization of the program had been severely restricted.

In testimony before the Subcommittee on September 28, 1982, Deputy Assistant Treasury Secretary Roger Mehle gave three reasons for the Administration's policy. Framed in the context of the Administration's overall preference for discouraging the use of tax-exempt IDB's his reasons were as follows:

> First, placing the credit of the United States behind a tax-exempt obligation creates a security that is superior to direct obligations issued by the U.S. Treasury and is contrary to the spirit of the Public Debt Act of 1941, which prohibits direct issuance by Federal agencies of obligations the interest on which is exempt from Federal income taxation.

> Second, Federal guarantees of tax-exempts also have adverse effects on the municipal market because they create securities which are superior to all other tax-exempt securities issued by State and local entities. Consequently, such guarantees add to the pressures on the municipal borrowers, and increase the borrowing costs of all municipal borrowers.
>
> Finally, a guarantee of a tax-exempt obligation is an inefficient means of Federal financing because the revenue loss to the Treasury greatly exceeds the interest benefits to the borrower of tax exemption.

With respect to the use of IDB's with 503 projects, Mr. Mehle further stated,

> The Administration would not object, however, * * * to a combination of an SBA guaranteed 503 debenture and tax-exempt securities * * *, so long as the SBA guaranteed debenture is in at least a parity position. * * *

On March 7, 1983 SBA published in the Federal Register proposed rules which would have fully implemented the Administration's recommendation that 503 debentures not be subordinated to loans made from the proceeds of the tax-exempt obligations. The publication of those regulations, however, only came after Senator D'Amato had introduced on February 16, 1983 S. 499, a bill amending Section 503 of the Small Business Investment Act of 1958 to prevent the SBA from declining to participate in 503 projects including or collateralized by tax-exempt obligations. That bill was referred to this Committee.

On March 9, 1983 the Committee met in executive session, adopted one amendment and ordered favorably reported S. 499 with an amendment in the nature of a substitute. In reporting out S. 499, the Committee noted that private sector witnesses' reaction to the Treasury's alternative proposal deemed it practicably unworkable in the "real world" of 503 financing. Thus, the Committee concluded that the OMB and Treasury policy would only prevent the 503 program from reaching its full potential as a major economic development tool. At a time when unemployment and high interest rates persisted, the Committee report accompanying S. 499 stated that it is particularly important for the 503 program be recognized for its potential to provide employment opportunities in this country. This potential, particularly in terms of the program's very low costs to the Federal Government when compared to public works employment, is tremendous. Assuming government figures of approximately $10,000 per year to create one job, it would require $1 billion in direct federal outlays to create 100,000 public work jobs in a year. Using the 503 program, however, the total financing is primarily through the private sector, with the only federal cost being the set aside for a loan loss reserve, which historically has proven to be a negligible amount. Further, the jobs created through 503 expansion would be ongoing private sector jobs as opposed to public works jobs which have traditionally required additional federal outlays each year. By its design, the 503 program has an immediate and significant effect on job opportunities in urban areas

that have local development companies already in place. The Committee believes that the Section 503 program offers the nation's small businesses—the bedrock of our competitive free enterprise system—a chance for needed capital with a minimum of federal involvement. It also holds the potential for thousands of new, permanent private sector employment opportunties.

On May 11, 1983, Senator Dole, then Chairman of the Finance Committee, requested that S. 499 be referred to his Committee. This request was granted, and on May 13, 1983, Chairman Weicker and then Ranking Member of this Committee, Sam Nunn, wrote to Chairman Dole asking that the Finance Committee quickly hold hearings and favorably report out S. 499. On October 28, 1983, Senator Robert Packwood, Chairman of Subcommittee on Taxation and Debt Management of the Senate Finance Committee, held a legislative hearing on several bills including S. 499. Senator Weicker testified before the Subcommittee urging its support for this measure. However, no further action was taken on this bill by the full Finance Committee.

TAX REFORM ACT OF 1984 INDUSTRIAL DEVELOPMENT BONDS

Tax-exempt "small issue" industrial development bonds (IDBs), authorized under section 103(b)6 of the Internal Revenue Code, have been used by state and local governments for several years to finance business growth and expansion. Small businesses have increasingly benefited from local governments creative use of tax-exempt bond financing, particularly during periods of high interest rates. Through the use of IDB financing, state and local development agencies have created or retained a significant number of jobs. However, the growth in the amount of tax-exempt financing issued by state and local governments has drawn the attention and concern of the Treasury Department which has sought legislation to curb their use.

Under the Tax Equity and Fiscal Responsibility Act of 1982, (TEFRA) Public Law 97-248, enacted on September 3, 1982, several legislative restrictions proposed by Treasury were imposed on IDB financing. Among the most serious restrictions imposed were the sunset of all small issue IDB's in December 21, 1986, and modifications in the depreciation rules for IDB financed facilities.

On February 2, 1983, Senators D'Amato, Stennis, Weicker and others introduced S. 391. This bill was essentially the same as a Stennis/D'Amato bill introduced late in the 97th Congress. The bill had two key features changing provisions of TEFRA: first, it would have eliminated the prohibition against the use of full Accelerated Cost Recovery System (ACRS) in connection with IDB financed facilities; and second, it would have removed the sunset provision which would have eliminated small issue IDB's after December 31, 1986. The bill was referred to the Senate Finance Committee where no action was taken on it.

On May 11, 1982, Senators D'Amato, Stennis, Weicker, Tsongas, Sasser, Huddleston, Dixon and 13 others wrote to President Reagan urging him not to support any tax legislation that would place any further burdens, than those imposed under TEFRA, on the use of tax-exempt financing. The letter stated:

Our support for the continued use of IDBs is predicated on several facts. These include:

Enlargement of the tax base. For example, as reported by the Texas Industrial Commission, the statewide development authority, between January 1, 1980 and April 22, 1983, 863 IDB issues were approved in that state. Even after accounting for the federal taxes foregone on the IDB bond interest, net new taxes generated amounted to $527.6 million.

Job creation. Between January 1, 1970 and December 31, 1981, the New York State Department of Commerce estimates that 103,707 jobs have been created from the use of IDBs in that State.

No adverse effect on the municipal bond market because of the supply of IDBs. Federal Reserve Board statistics indicate that the ratio of tax-exempt bond rates to taxable bond rates has not increased. In 1958, long before IDBs became a factor in the market, the ratio between tax-exempt bond interest rates and taxable bond rates was .939. The ratio was considerably less at .755 in October, 1982, a time when it had been erroneously forecast that a crowding-out of municpal securities would occur due to the increased issuance of Industrial Development Bonds.

The Senators argued that TEFRA reduced both the abuses and supply of IDBs and that further restrictions were not necessary and would be counterproductive.

On September 2, 1983, Assistant Secretary for Tax Policy at the Department of Treasury, John Chapoton, responded to the May 11 letter to the President. Mr. Chapoton reiterated the Treasury Department's concerns for the growth in the volume of tax-exempt IDBs. The reasons for their concern with the growth, the letter stated, were: (1) an increase in the volume of tax-exempt IDB's would cause other tax-exempt interest rates to rise; (2) tax-exempt IDBs were an inefficient subsidy for businesses; and (3) IDB financing caused a loss of revenue from the U.S. Treasury. The letter asserted that the increasing volume of IDBs would continue despite the TEFRA restrictions. While the Administration had not made further legislative proposals since TEFRA to restrict IDB financing, Treasury had testified in support of pending House legislation proposing further restrictions on tax-exempt bonds. The proposed restrictions were similar to those in a Treasury Department 1982 proposal.

On October 20, 1983, the House of Representatives Ways and Means Committee ordered reported legislation, H.R. 4170, which contained several tax reform proposals including additional restrictions on IDB's. Specifically, the bill proposed a $150 per capita state-by-state volume cap on the amount of industrial development and student loan bonds that could be issued by a State; a $40 million limitation on the amount of outstanding tax exempt bonds any one company may have; a prohibition on the use IDB's to purchase land or existing facilities; further restrictions on depreciation of IDB financed facilities; a prohibition of Federal guarantees of tax-exempt obligations with the exception of Veteran, Federal Housing Administration, SBA pollution control and student loan guaran-

tees, among others. On April 11, 1984, the House of Representatives passed H.R. 4170, the Tax Reform Act of 1984.

Meanwhile, the Senate Finance Committee was considering its own version of tax reform legislation as a component of its legislative deficit reduction proposal. Beginning on April 5 and continuing on April 9–12, 1984, revenue and spending provisions of H.R. 2163, the Finance Committee deficit reduction proposal, were debated on the Senate floor. The revenue provisions of this proposal, as reported out of Committee, also contained several provisions to restrict the use of the tax-exempt financing which were very similar to the provisions of H.R. 4170. However, S. 2163 did have a state per capita cap on that amount of bonds.

During Senate floor debate on H.R. 2163, Senators Stennis, D'Amato, Weicker, Tsongas and others offered a compromise amendment regarding IDBs. Specifically, the amendment provided a sense of the Senate Resolution against IDB volume caps; extended the sunset date for small issue IDB's until 1990; exempted manufacturing facilities from the $40 million per company cap on outstanding IDB's; and, created a new list of projects which would be ineligible for IDB financing. This amendment was accepted and passed the Senate on May 17, 1984, at which time the Senate asked for a conference.

On June 23, 1984, the Committee of Conference ordered reported H.R. 4170, which included the Tax Reform Act of 1984. The Conference Report included more restrictions on tax-exempt IDB financing. Specifically, the Conference Report included the following restrictions:

an annual (a) $150 per capital or (b) $200 million state cap on the amount of IDB's than can be issued;

a $40 million limitation on the amount of tax-exempt financing allowed to any one company;

further restrictions on depreciation of IDB financed property;

a prohibition on federal guarantees of tax-exempt obligations with some exceptions;

limitation on use of IDB's for acquisition of land and existing facilities;

an extension of small-issue IDB's for manufacturing facilities until December 31, 1990.

Included among the exceptions to the Conference Report prohibition on federal guarantee of tax-exempt obligations was the SBA Pollution Control Equipment Contract Guarantee Program. This exception only applies if SBA charges at least a 1 percent guarantee fee.

On June 4, 1984, Senators Weicker, Bumpers, D'Amato, Hatch, Boschwitz, Pressler, Huddleston, Sasser, Levin, Tsongas and Dixon wrote to the House and Senate Conferees urging them to allow the SBA Administrator to establish the guarantee fee and not to allow Secretary of Treasury an override. The conferees agreed to the House passed provisions of the bill which created an exception for the SBA Pollution Control Program and did not give the Treasury Secretary any authority to set fees. The conferees agreed with the House provision.

On June 17, 1984, the Conference Report passed the Senate. On July 18, 1984, President Reagan signed Public Law 98–369, the Deficit Reduction Act of 1984.

S. 2069

Prior to the enactment of the 503 Certified Development Company Program, SBA was authorized to make direct and guaranteed loans to local development companies for "bricks and mortar" financing under section 502 of the Small Business Investment Act of 1958. Under the 502 program, development companies can make loans to small business concerns for the same purposes as under the 503 program, i.e., to purchase land, to acquire or construct a new plant, or to convert or expand the firm's existing plant. Like the 503 program, the maximum amount of financing available for a 502 loan is $500,000 and the maturity on a loan can be for up to 25 years. After enactment of the 503 program, many 502 local development companies began making the transition to becoming certified under the 503 program. During this transition, certified development companies continued to participate in the 502 program when project opportunities and funds are available.

Since enactment of the 503 program, some CDC's have continued to use the 502 guarantee program where 503 financing has proven unworkable. Both programs are designed to meet small business' critical need for affordable, long-term capital for fixed asset financing in order to expand and create new jobs, and CDC's have found these two program compliment, rather than compete with each other. Where CDC's have determined that utilization of debenture financing through the 503 program has not been available, the 502 loan program has presented another viable alternative.

Under section 7(a) of the Small Business Act, the agency's regular business loan program, SBA is authorized to make and to guarantee loans to small business concerns for any business purpose, including for working capital. The maximum 7(a) loan amount which can be outstanding to a small business concern is $500,000.

For eight years, prior to December 1983, first under the 502 program and then later under both the 502 and 503 programs, it had been SBA's policy to permit eligible small business concerns to receive up to the maximum loan amount of $500,000 under either the 502 or 503 program, and to permit these loans to be combined with loans granted by SBA under the 7(a) regular business loan program for a maximum, combined total financing of up to $1 million. This permissible combination has proven particularly beneficial to many small businesses needing working capital assistance, which is available only through the 7(a) program, to help finance business expansion or plant modernization.

Under Public Law 97–35, the Reconciliation and Loan Consolidation Act of 1981, several SBA loan programs were consolidated into section 7 of the Small Business Act, which contains most of the Agency's non-disaster lending programs. This action was taken at the Agency's request in order to facilitate the Agency's administration of its several loan programs, standardize the terms and conditions of current programs and discard obsolete programs. Although the statutory program authority for development company loans is

found in Title V of the Small Business Investment Act of 1958, the authority to fund Title V programs was specifically incorportated into section 7 of the Small Business Act by the 1981 law. When Congress consolidated these programs, there was no discussion or intention that this action would overrule's SBA's policy of permitting the combination of development company and regular business loans over $500,000. However, on December 20, 1983 SBA issued a policy to its field offices stating that pursuant to General Counsel's interpretation of Public Law 97-35, "companion loans" in excess of $500,000 would no longer be permitted.

On November 8, 1983, anticipating SBA's policy change, Senator Larry Pressler introduced S. 2069, which was referred to the Committee. The bill proposed an amendment to the Small Business Act which would insure that financings to state and local development companies under sections 502 and 503 of the Small Business Investment Act of 1958 would not be considered when computing the total amount of financing available to an eligible small business borrower under Section 7(a) of the Small Business Act. In other words, the amendment would permit the combination of sections 502 and 503 development company loans with section 7(a) loans in excess of the current $500,000 maximum loan limitation. This amendment would have overturned SBA's December 20, 1983 policy, which reversed an eight year old agency policy that permitted such combination loans in excess of $500,000.

On May 1, 1984, Senator Pressler chaired a full Committee hearing on the bill. The Committee received testimony from Edwin Holloway, Associate Administrator for Finance and Investment for SBA, representatives of three SBA 503 Certified Development Companies: William Folkerts, Treasurer of First District Development Company, Watertown, South Dakota, Evelyn Beale, Secretary/ Business Finance Representative for the Milwaukee Economic Development Corporation, Milwaukee, Wisconsin, and Arthur Goodman, President, President of the San Diego County Local Development Corporation, San Diego, California. The Committee also heard from Leroy Hagenbuch, President of Phillippi-Hagenbuch, Inc., a small business manufacturer in Peoria, Illinois.

All of the witnesses at the hearing testified in support of the legislation, pointing out that under the current SBA policy significant job generating projects would be lost and the overall objectives of the 503 program could be frustrated. The private sector witnesses urged the Committee to quickly adopt the bill to reinstate SBA's previous practice which permitted an eligible and qualified small business concern to receive up to $500,000 in financings under each program, that is up to $1 million.

On May 8, 1984, the Committee met in executive session and, with a quorum present, ordered S. 2069 favorably reported without amendment.

In reporting out the bill, the Committee concluded that to realize their fullest potential, CDCs should continue to have the flexibility to choose among Federal financial assistance programs to meet differing needs and circumstances of expanding small businesses. In addition to the 503 program, CDCs have effectively used the SBA section 502 and 7(a) loan programs to provide fixed asset financing and working capital, respectively. SBA's prior practice provided the

necessary flexibility to meet the country's pressing need for jobs. SBA's new policy only thwarted and frustrated these objectives. Furthermore, the present policy may serve as an obstacle for small businesses that have traditionally relied on receiving SBA assistance under the 7(a) program, from using the 503 program at the very time that they most need it to expand. The Committee believed that S. 2069 would properly reverse the current counter-productive policy without additional funding demands.

On May 16, 1984, S. 2069 was reported to the Senate by Chairman Weicker, and it passed the Senate on May 24, 1984 by unanimous consent. It was referred to the House Small Business Committee, where no further action on the bill was taken.

SECTION 501 STATE DEVELOPMENT COMPANIES

Pursuant to the laws of individual states, an economic development authority, or business development corporation, may be formed. These entities derive their private capital by borrowing funds from member financial institutions. Under section 501 of the Small Business Investment Act of 1958, SBA is given explicit statutory authority to make long-term, direct loans only to these state development companies. In 1982, there were 24 state development corporations, although only 16 were active. Bank financings made in conjunction with 501 companies totaled over $71 million, with almost half of the assistance going to manufacturing firms.

In recent years, the Congress and SBA have limited access to the direct loan funds of the agency, which had the unintended effect of cutting off a source of funds to these state development corporations. In the interim, state development companies relied on the funds previously made available to them by SBA, and on the increase in their private capital contributed by member financial institutions. Neither Congress nor SBA had actively sought to terminate the authority of these state development corporations.

To revive the program, Senator Sam Nunn introduced S. 745 to make 501 companies eligible to receive guaranteed funding through issuance of debentures. That proposal was incorporated in S. 1323, the Committee bill to reauthorize SBA programs for fiscal years 1985–1987 (See Chapter V on "Small Business Administration"). Since S. 1323 was at a stalemate in conference, Senator Nunn offered an amendment to H.R. 5712, the FY85 Appropriations bill for State, Justice, Commerce, Judiciary and related Agencies. The amendment provide $5 million of direct loans to allow the 501 program to be reactivated. The amendment was accepted by Senator Warren Rudman, passed the Congress and enacted in Public Law 98–411 on August 30, 1984.

IMPACT OF CRIME ON SMALL BUSINESSES

The Committee on Small Business at the request of Senator D'Amato, concluded a series of field hearings on the impact of Crime on Small Business. The final field hearing was held on October 12, 1983 at Buffalo, New York, and was the fourth in a series. The earlier hearings were reported in the activities of the 97th Congress.

The purpose of the October 12 hearing was to continue the exploration, in depth, of crime and its effect on small businesses of America. There is little doubt that crime has become one of the largest threats to small business. Senator D'Amato spoke to the issue as follows:

> The Bureau of Justice Statistics of the Department of Justice estimates that the average small business is ten times more likely than the average individual to be victimized by crime. In many communities, this crime epidemic makes it impossible for businesses to survive. Unfortunately, dry statistics such as these are not able to tell us very much more about the impact of crime on small business. * * * We have a responsibility to propose some solutions. That is particularly true for elected officials, who know that 90 percent of the public does not believe that our criminal justice system is adequately dealing with the force of lawlessness.

Senator D'Amato outlined his, then, recently developed 8-point program which deals with the major criminal issues and is intended "to restore sanity to the system". The program is summarized as follows:

Crush the major heroin trafficking operations.

Increase federal law enforcement resources with regard to Drug Enforcement Administration.

Expand law enforcement efforts against the newly emerging organized crime groups.

Free up scarce resources of the Department of Justice for the war on crime by assigning civil litigation to private law firms.

Require pretrial detention without bail for those whose release would pose a threat to the safety of the community.

Imprisonment of these offenders once they are convicted—eliminate bail during appeal.

Fixed sentences, also known as determinate sentencing, which will eliminate parole for convicted federal offenders.

Appellate review of lenient sentences.

The Committee heard testimony from a number of distinguished local officials who substantiated the negative impact of drug-related crime on small business and economic development within the Buffalo community. Mayor James D. Griffin of Buffalo, testified that: "a recent study disclosed that drug users cost the American taxpayer in excess of $5 billion for their crimes annually" * * * "Only through a concerted Federal, State and local effort can we expect to eradicate this cancer on our society".

Mr. Edward J. Rutkowski, county executive, County of Erie, N.Y., spoke of the impacts of drug related crimes:

> It is only recently that we are beginning to understand the full economic and social impacts. *Probably* the most immediate harm is suffered by the struggling innercity businessman. Already suffering economic difficulty from declining patronage, high insurance rates and arson, the small businessman in these areas is forced to face the threat of drug-related crime. Shoplifting is prolific—in

fact, a major cost factor—and armed robberies are an ever-present possibility. Police estimate that more than one-half of such crimes in these declining neighborhoods is drug related.

Crime impacts the small businessman not only through shoplifting, burglary and robbery, but also by driving customers away. Individuals from the suburbs fear to come to these areas. As a result, business declines. How much of these problems can be apportioned to drugs is difficult to define precisely. One thing is clear: it is a sizable percentage.

The Committee also heard from Salvatore R. Martoche, U.S. Attorney, Western District of New York:

An enormous amount of crime is committed to sustain drug habits. Huge profits are available from manufacturing and distributing drugs, which causes the concomitant growth of organized crime groups. I think that is something which people have to realize—that this money is not being disbursed in a nonchalant manner. It is going to organized criminal groups to finance more criminal activity. Drug abuse and trafficking is a large part of the problem of crime in America.

I personally believe that we could probably reduce crime by 50 percent if we could effectively control drug abuse and trafficking in this country.

As part of its investigations, the Committee believed it to be absolutely essential to hear from crime victims in order to fully understand the effects of crime on small business.

At the hearing, for example, the Committee heard from Raymond Fink, whose deceased father and uncle were proprietors of a downtown Buffalo clothing store. During the Christmas season of 1979, the two brothers, a sales clerk, and a patron were forceably bound, beaten, and systematically stabbed by three assailants who also carried a sawed-off shotgun. Mr. Fink's father and uncle died on the premises while the sales clerk and patron continue to carry their physical and psychological wounds. This tragic event caused extreme emotional and financial hardship on two families, and also ended what had been a thriving small business for over 50 years.

Another witness, David Adler, who with a brother is coproprietor of Trout Line Fish Co., a business that was started in the early 1900's. The frequency of robbery and burglary at the family business forced his father into early retirement. The Committee heard details on how the company had been burglarized four times in five days. The burglars efforts included cutting holes in the roof of the premises and smashing through concrete block walls to gain access in the attempts to steal fish, chicken and modest amounts of cash. The area of Buffalo in which this business is located is infested with drug dealers and users, and their perpetration of crime on this company will most likely cause it to move out of the city. Many of the 25 employees will be dislocated in the transition as inner city people are seldom able to make the transition to suburbia.

William Johnson reported his family manufacturing business of 60 years experiences such frequent burglaries that he can no longer retain any female office help due to fears of bodily harm. In spite of extensive security measures, Mr. Johnson is still required to nightly remove all portable office equipment. He also fears prosecution of the perpetrators lest they return and burn down his business.

The Committee heard from Dr. Franklin Yartz, a doctor of veterinary medicine, who operates a small animal hospital. On the morning of December 10, 1981, three men entered the animal clinic wielding a sawed-off shotgun, a knife, and a toy pistol.

The receptionist, Debra Crowney saw the would-be robbers and turned to run down a corridor in an effort to alert the doctor of what was about to happen. The assailants leveled the shotgun and without hestitation discharged it striking Mrs. Crowney at almost point blank range. The young expectant mother died approximately one hour later at the hospital.

Brian Levin, the proprietor of a jewelry store in a suburban Buffalo shopping mall, related an incident where a young woman successfully robbed his business at gun-point, of some $250,000 in rings and jewelry. The robber, later caught, gave a full confession and produced five $100 bills indicating that was all she received for the stolen merchandise. Meanwhile, Mr. Levin's business stood the loss of thousands of dollars for the uninsured portion of merchandise.

Another witness, Marvin Frankel, vice president of a chain of moderate-sized retail department stores, gave testimony on the increasing volume of shortages and shoplifting in the retail trade. He noted the substantial financial implications by saying, "I think most retailers would trade their shortage percentage against their profit percentage". He relates that much of the theft is in support of drug habits. His company had even gone so far as to hire professional shoplifters in order to assist management in curtailing the illicit activity. Often times the hiring of professional shoplifters was merely to remove them from the supply chain as an expert could steal as much as $1500 of goods per day.

The Committee also heard from a distinguished panel, including Honorable Timothy J. Drury, Judge, Buffalo City Court; Richard J. Arcara, District Attorney, Erie County; and Reena Raggi, Chief, Narcotics Section, Eastern District of New York. This panel discussed the devastating effects of drug trafficking on small business as well as the inadequacies of the pretrial detention system in New York State.

Senator D'Amato closed the hearing by indicating,

> the need to intensify our efforts and to address some of the glaring deficiencies at our Federal and State levels.
>
> In the Federal area we are making headway. The Judiciary Committee has reported out the Comprehensive Crime Control Act 15 to 1, which will set a standard the States, then, can begin to follow.
>
> I do not think the best laws in the world are going to stop this problem, but certainly it is going to give us the tools to make it possible to be much more effective in dealing with the problem than we are today.

The Committee will continue to look into the problem of crime and its impact on small business.

Chapter X. Minorities and Small Business

Over the past two decades, the Federal Government has directly tried to enhance the economic well being of socially and economically disadvantaged persons by creating programs and initiatives to promote minority business development. According to the President's 1984 report on the State of Small Business, "progress has been made" in this area, the Committee believes that the federal effort has been an important contributing factor in increasing economic opportunities for minorities.

During the 98th Congress, the Committee continued to work with the Administration, and monitor the effectiveness of federal programs designed to promote minority business development.

The President's Initiatives

On December 17, 1982, President Reagan issued a policy statement which reaffirmed his Administration's support for federal minority business development programs. According to the President, his program for federal minority business development for the 1980's was based on the four following principles:

A healthy growing economy is fundamental to creating the opportunity for the formation and growth of minority-owned business.

Greater economic independence for minority Americans will best be achieved through increased opportunities for private employment and business ownership.

Creativity, private entrepreneurship, and individual initiative will ultimately determine the success or failure of individual minority businesses.

Expanded involvement of other private firms is crucial to minority enterprise development efforts.

As specific steps to promote minority business development, the President established the following goals:

The Minority Business Development Agency and the Small Business Administration (SBA) will assist directly in the formation of at least 60,000 new minority businesses over the next 10 years.

The Federal Government would procure an estimated $15 billion worth of goods and services from minority businesses in Fiscal Years 1983–85.

The Federal Government will make available approximately $1.5 billion in credit assistance and $300 million in management and technical assistance to promote minority business in Fiscal Years 1983–85.

Furthermore, the President said he would:

direct federal department and agency heads to develop and implement incentive techniques that will encourage greater minority business subcontracting by federal prime contractors;

direct grant-making federal agencies to encourage grantees to achieve reasonable minority business participation levels; and

would ask the country's business leaders to work with him to encourage private firms to expand their business transactions with minority businesses.

In order to achieve the specific goals and targets, the President announced that he would issue an executive order to direct the Interagency Council for Minority Business Enterprise to establish uniform guidelines for all minority business efforts and to direct the Cabinet Council on Commerce and Trade to submit an annual plan specifying minority enterprise development objectives for each federal agency. The President's statement also directed federal agencies to increase minority procurement achievements in 1983 by at least 10 percent over actual procurement in 1982. He also announced that, beginning in 1983, he would designate the first full week in October as Minority Enterprise Development week.

On July 14, 1983, President Reagan signed Executive Order 12432.

The 8(a) Program

SBA's 8(a) program, is the Federal Government's premier program for assisting minority-owned businesses. Since the program began in 1968, over $10 billion worth of Federal Government procurement contracts have been awarded to the approximately 5,000 participating minority owned firms.

Section 8(a) of the Small Business Act authorizes SBA to enter into contracts with other federal agencies, and then subcontract the work to small businesses owned and controlled by socially and economically disadvantaged persons. Prior to 1978, SBA used the 8(a) program to direct federal contracts to minority-owned businesses. As such, the program lacked any specified mission beyond simply providing contracts to minority firms. Through Public Law 95-507, enacted in October, 1978, Congress redirected the thrust of the program by placing a greater emphasis on business development. In addition to providing contract assistance, SBA was directed and given resources to provide a fuller range of services, including managerial, technical and financial assistance to qualified firms in order to develop competitive businesses.

In the 96th Congress, the Committee noted, in its review of SBA's administration of the 8(a) program, that the agency had not aggressively established and reviewed the business plans required to be submitted by all program participants. Furthermore, a General Accounting Office (GAO) report on the program had disclosed that for several years, 31 percent of the total 8(a) contracts had gone only to 50 companies, most of which had been in the program for several years. The Committee also noted that SBA had failed to act in a timely fashion to review the graduation potential of firms in the existing portfolio. To address these problems, the Congress, in October, 1980, passed Public Law 96-481 requiring that SBA negotiate with all participating 8(a) firms a specific date after which the company would "graduate" from the program.

On June 16, 1982, GAO rendered an opinion on a protest of the award of a contract to an 8(a) concern. That opinion held that the SBA must suspend contracting with any 8(a) firm found to be other than a small business as a result of an SBA size determination.

(Matter of Computer Data Systems, Inc., File: B-205521.) Pursuant to the GAO decision, the SBA Administrator, James Sanders, on June 17, 1982, issued a directive to all field personnel informing them of the decision and stating that no new contracts should be awarded to those firms which had been found to be other than small.

The practical effect of enforcement of the GAO opinion was to prevent further contract awards to 23 firms which had been found not to be small, acording to SBA's size standard.

Shortly after the June 16 opinion, Administrator Sanders requested that the Comptroller General reconsider his opinion. While the reconsideration request was pending, a lawsuit was filed in the D.C. Federal District Court, and a temporary restraining order was issued by the Court to keep the Administrator from enforcing the GAO opinion.

On July 26, the GAO rejected the Administration's arguments and upheld its earlier decision. Shortly thereafter, on July 30, the District Court ruled that the GAO opinion and reconsideration were correct. Although the court said that "we conclude that contract assistance cannot continue after an 8(a) firm has formally been found other than small" the court had noted earlier in its opinion that Congress had left the determination of size standards to SBA. The court said: "Congress could have legislated such an exception, and SBA could have administratively created different size standards for 8(a) as opposed to non 8(a) concerns. Neither had done so."

After several meetings and discussions with the effected firm and Committee staff, on August 12, 1982, the Administrator, with the full support of Chairman Weicker, issued an interim emergency size regulation which temporarily raised the size standard in order to permit those firms to continue to receive contracts. The intent was to mitigate the abrupt and potentially devastating consequences of the GAO opinions and court decision. This temporary regulation was effective for six months and expired on February 14, 1983.

As the February expiration date approached, a publicized controversy emerged about the effective "graduation" of the 23 firms found to be other than small. Merging the issues of the graduation of the 23 firms with the prospect of an additional 400 firms graduating from the program pursuant to terms negotiated under Public Law 96-481, critics of the Administration claimed that the executive branch had abandoned the historical support of both Democratic and Republican Administrations for minority business programs. It was argued that withdrawal of 8(a) support from these firms would cause the demise of these businesses and a concomitant lose of a significant number of jobs.

On March 23, 1984, Chairman Weicker held a hearing to examine the Administration's plans for supporting minority business. Secretary of Commerce, Malcolm Baldridge, and SBA Administrator Sanders, representing the two agencies with primary responsibility for minority business programs, were invited to testify. Included among the topics discussed at the hearing was the administration's response to the charges about the 23 firms that had been found to be other than small and the 400 firms that would soon be graduated from the 8(a) program. Joining the Chairman at this hearing were Senators Nunn and Dixon.

At the hearing, Secretary Baldridge and Administrator Sanders announced a coordinated program that their agencies intended to pursue to promote minority business development and to achieve the goals set by the President's December 1982 plan. That seven point program included:

An executive order to all Federal agencies and department heads, setting forth the goals of the President and ordering compliance;

The establishment of a Cabinet Council review board to monitor agency compliance with Administration goals;

A requirement for quarterly reports from each agency to ensure procurement goals are being met;

The immediate creation of a post-graduate program by the Minority Business Development Agency of the Department of Commerce to assist minority farms in getting private and public sector contract awards after they leave the 8(a) program;

An increased participation in, and access to, the 8(a) program by a greater number of minority firms;

A coordinated effort by SBA and MBDA to provide ongoing, increased technical and management assistance to 8(a) firms; and

The establishment of a national network of Minority Business Development Centers to work with Small Business Development Centers to provide management and technical assistance to all minority firms.

Other witnesses at the hearing included William Hales, editor and publisher of the Inquirer Newspaper Group of Hartford, Connecticut, and John Shepherd, President of Dale Maintenance Company of Chicago, Illinois. Both witnesses agreed that the benefits of the SBA 8(a) program should be made available to more minority businesses and that to achieve that goal under the present structure of the program, graduation of firms was necessary and important.

Mr. Hales, whose business would not be a prospect for the program, stated, "there are too many minority businesses that are knowledgeable of the section 8(a) program, who have lost hope of ever reviewing an opportunity to participate in it, and, many firms have no knowledge of the program, whatsoever." He specifically recommended that the existing portfolio needed to be increased by 25 percent in order to serve more firms. Pointing out a need for graduation of firms, Mr. Hales concluded, "If minority businesses are to achieve success in the mainstream of the economy, the (8(a)) program should offer an incentive, instead of a subsidy."

Mr. Shepherd, whose business began working in federal contracting with a $13,000 8(a) contract in 1973, strongly believed that graduation was a viable concept. In his opinion, firms entering the program should immediately begin to plan for the day when they would leave the program. As he stated, "(had) we not worked toward the eventual day of graduation, had we not prepared for it and had a target number in sight, the withdrawal of government support would have a severe hardship on our company. Based on our experience, I would suspect that any company failing to so prepare would find the experience traumatic and perhaps fatal." In

his judgment, the ultimate success of 8(a) firms depended on building strong ties to the private sector.

Throughout the balance of the 98th Congress, the Committtee staff monitored the Commerce/SBA's coordinated program, and found that some progress was made in fulfilling the program's goals. In fiscal year 1984, SBA reported that $2.64 billion of contracts had been awarded to minority businesses, and in April 1984, SBA reported that 500 new firms had been admitted to the 8(a) program. On the other hand, Committee staff found in field visits to MBDA grantees that the coordinated effort and "graduation" plan was not effectively being implemented.

In January 1984, Chairman Weicker wrote to Secretary Baldrige and Administrator Sanders, communicating his concerns resulting from the staff visits. The Chairman pointed out that communication between SBA and MBDA field offices was only partly working. He stated; "At best, there was only a faint familiarity with the specific topics discussed at the March 24 hearing. With respect to the transition program for 8(a) graduates, SBA personnel recalled preparing profiles on impending graduates and sending them onto the SBA central office, but they had no knowledge of whether the MBDA grantee ever received the profiles. Since the time those profiles were prepared, it was obvious there had been no follow-up discussions.

The letter further concluded that in the specific case of the Seattle district, although several firms were scheduled to graduate, there has been no transition program for these firms.

The Committee heard from recent 8(a) graduates who expressed a similar sentiment.

The 8(a) Pilot Program

BACKGROUND

In 1978, Congress also authorized an 8(a) Pilot Program, Public Law 95-507, which expired September 30, 1980. Under its provisions, the President was authorized to select one agency over which SBA would be given the authority to take procurement contracts for inclusion in SBA's 8(a) program for the development of minority enterprise.

Under the regular 8(a) procurement program, a procuring agency is given full discretion to "volunteer" requirements to SBA for use in the 8(a) program. Under the pilot program, SBA is given the authority to select and negotiate any requirement from the designated agency that it deems appropriate for inclusion in the 8(a) program. The head of the participating agency, however, retains authority over the final terms and conditions under which the contract will be awarded to SBA for subcontracting to the socially and economically disadvantaged firm selected by SBA to perform the contract.

On January 10, 1979, the President designated the Department of the Army as the pilot agency. However, SBA and the Department of Army were unable to enter into an interagency agreement setting forth the formal terms and arrangements for their joint implementation of the pilot program until May 24, 1979—nearly 5

months later. Thereafter, the first contract was not signed under the program until September 27, 1979, nearly a year after enactment of the pilot authority.

Because of the delays in implementation of the pilot program and the Congressional concern that the program had not been fully tested, the program was extended by Public Law 96–481 until September 30, 1981.

In the 97th Congress, Senator Weicker introduced S. 1620, which would have extended the program for 18 months and would have required the President to designate a civilian agency for the pilot. The Committee unanimously ordered S. 1620 favorably reported without amendment. Unfortunately, the full Senate was unable to consider the bill before the end of the 97th Congress.

On January 27, 1983, Senator Weicker introduced S. 273, the Minority Small Business Pilot Procurement Act of 1983. This measure contained essentially the same provisions as S. 1620. It authorized the pilot program for 18 months after enactment and required, that the President, within 60 days of enactment, designated a civilian agency for the pilot.

On February 2, 1983, the Committee held a legislative hearing on S. 273. SBA Administrator Sanders, and an association representing minority contracts testified in support of S. 273 and the reauthorization of the pilot program. The Committee also received written statements from minority business associations in favor of the legislation.

Mr. Sanders stated the SBA's view of the authority as follows:

> The concept behind the pilot program is to test whether SBA can accelerate the development of 8(a) concerns by awarding non-traditional, technically sophisticated, high volume, long-term contracts. Additionally, the pilot program will enable us to determine whether providing SBA the authority to select contracts is a viable way of modifying the procurement practices of federal agencies with respect to minority firms. It will also give SBA the opportunity to demonstrate that 8(a) concerns can—with targeted SBA assistance—overcome specific impediments that would prevent these concerns from successfully completing more difficult projects.

Mr. Sanders further expressed concern that:

> The authority given SBA in the pilot program will not work if it is used as a club. I am concerned that pressures will cause our position to be used in that manner. For the 8(a) program to be successful, procuring agencies must be provided incentives to award 8(a) contracts in non-traditional areas. If this legislation is enacted, I will endeavor to establish a cooperative relationship with the head of the designated agency necessary to ensure a positive rather than contrary experience.

Mr. Sanders supported reauthorization of the program, and concluded that "the Administration supports passage of S. 273, just as we supported passage of S. 1620 last year. I am committed to ensuring it receives a fair test and evaluation."

At the February 2 hearing, the Committee also received testimony from Paul Brown, of the National Association of Minority Contractors. He recommended that the pilot program be reauthorized, and stated:

> We believe the purpose of the pilot program was to help SBA increase its ability to assist disadvantaged firms over and beyond what the Agency was doing through the regular 8(a) program. . .The National Association of Minority Contracts (NAMC) endorse and strongly recommend the reauthorization of the SBA's 8(a) Pilot Procurement program as proposed by S. 273 * * *

Although he supported reauthorization of the program, Mr. Brown also recommended that the Department of Defense or its components not be exempted from being designated as the pilot agency under the bill. The same concern was raised in written testimony from the Black President's Roundtable and the Latin American Manufacturers Association during Committee consideration of S. 273. While understanding this concern, the Committee believed that there is a sufficient number of quality procurements, including high-technology contracts, in civilian agencies with which to test the viability of the 8(a) pilot program.

Thus, the Committee concluded that SBA had been partially inhibited in meeting the congressionally mandated mission of using the 8(a) program to assist socially and economically disadvantaged small businesses to compete in the free enterprise system due to SBA's forced reliance on procuring agencies' offers of "traditional"—that is, service or low dollar value—requirements for minority business. The Committee believed that an 18-month extension of the pilot program authority was necessary before Congress could fully determine whether shifting the selection of procurement opportunities from the procuring agency to the Small Business Administration could increase SBA's ability to more rapidly develop the competitive viability of 8(a) program participants.

Within the context of the comprehensive business development plan for each firm eligible to participate in the 8(a) program, the Committee report stated that the panel expected SBA to use this additional authority to select nontraditional procurement requirements, including, when appropriate, more sophisticated, opportunties such as high technology, which offers the potential for increasing an 8(a) firm's technology capability and business growth. Mr. Sanders assured the Committee that his agency would put forth their best effort to insure that the pilot concept was fully tested.

On February 2, 1983, the Committee unanimously ordered S. 273 favorably reported with one amendment. An amendment offered by Senator Levin, mandated that the 18-month period would begin 60 days after enactment of the bill. The purpose of the amendment was to allow a period of time, 60 days after enactment, during which the President could designate an agency and SBA and the designated agency could together begin to establish the administrative framework within which the program would operate. By adopting this amendment, the Committee hoped that the long delays that occurred during prior implementation of the pilot authority could be avoided. The Committee believed that SBA should have a

full 18 months in which to test the concept, and the Levin amendment reasonably achieved that purpose. On February 3, the Senate considered and passed S. 273. On June 23, 1983, the House-Senate conference agreed to S. 273. The House has passed a version of S. 273 which also extended for two years the 8(a) pilot and the pilot surety bond waiver program, which had also originally been authorized by Public Law 95–507. That conference report was passed by the Senate on June 27 and by the House on June 30, 1984.

On July 13, 1983, the President signed the bill, and it became Public Law 98–47. The President subsequently designated the Department of Transportation (DoT) as the pilot agency, and on November 3, 1983, SBA and DoT executed an Interagency Agreement, setting forth the procedures and policy for the operation of the 8(a) pilot program.

MINORITY ENTERPRISE DEVELOPMENT [MED] WEEK

Pursuant to the President's Proclamation, the first full week in October was to be designated Minority Enterprise Development [MED] Week. The first national MED week celebration occurred during the week of October 3–7, 1983, with the theme for the week being, "Minority Business: A Dream Fulfilled." The week prior to the national celebration, minority entrepreneurs chosen from each of SBA's ten regions were honored at regional celebrations.

Also, in the regions during pre-MED week, programs semminars and workshops were held for current and prospective minority business owners. Shortly afterwards, minority entrepreneurs from each region were invited to Washington and honored at week-long celebrations, The highlight of the week's activities was a reception with the President to honor the minority businessperson and contractor, of the year followed by a White House luncheon.

The second annual national MED Week was held in October 7–13, 1984. The Week's activities and programs were very similar to the first year. The unique feature of the second annual MED Week, however, was the National Minority Procurement Fair, sponsored by SBA. At this fair, SBA used a "reverse procurement" fair approach—instead of having procuring agencies set up booths for prospective contractors to visit them and discuss an agency's needs, the "reverse" approach had 200 8(a) companies from all ten SBA regions set up booths where officials from procuring agencies and private corporations could circulate and talk with 8(a) firms. This three day fair was a well attended success. Procuring officials commented on the capabilities the manufacturing and high-tech companies present, and representatives of the firms favorably noted the prospective business opportunities.

INDIAN TRIBALLY-OWNED BUSINESSES, S. 1022

Background

In March 1982, the SBA Office of General Counsel issued an opinion which concluded that tribally-owned businesses were not eligible for the program under the criteria established by Public Law 95–507. Focusing on the use of term "individuals" in the Small

Business Act, and the legislative history of the law, the opinion concluded * * *

> absent express statutory authorization, it is our view that 8(a) eligibility must be based upon identifiable disadvantaged individuals; it may not be based solely upon an amorphous ownership by a tribe or public corporation without reference to such individuals.

The effect of this opinion was to deny any further contracts under 8(a) tribal businesses which had previously been eligible for the program. In addition, it meant that no new tribally-owned businesses could be certified.

In June 1982, Senator Mark Andrews introduced S. 2703, a bill to overturn the Administration's newly-announced policy. The Committee did not formally consider S. 2703 during the 97th Congress. However, in October of 1982, the SBA General Counsel reversed his earlier decision and ruled that tribal enterprises were eligible to participate in the 8(a) program under certain conditions. He set forth the procedure for certifying tribes as follows:

> First, the tribe itself would have to make a showing satisfactory to SBA that it is economically disadvantaged. This may involve nothing more than reference to available economic data showing the tribe's economic condition. It would not involve a determination as to the social and economic disadvantage of the individual tribe members. The second eligibility determination, however, would involve a finding by SBA that the individual tribal members responsible for the daily management and control of the enterprise are socially and economically disadvantaged. This latter determination could fulfill the statutory goal of fostering the development of entrepreneurs from groups presently owning and controlling little productive capital.

Since the issuance of the General Counsel's opinion, no regulations implementing the decision or guidelines to its field offices have been issued by SBA.

S. 1022

Even though the General Counsel's October 1982 opinion made tribes eligible for the program under certain conditions, Senator Andrews felt that it was important for Congress to clarify its intent. Indeed, despite the issuance of the October, 1982 opinion, tribal representatives have advised the Committee that SBA field officers are still maintaining that tribes are not eligible to participate in the 8(a) program.

On April 12, 1983, Senator Andrews introduced S. 1022. Under its provisions, Indian tribes would be considered presumptively socially and economically disadvantaged for the purpose of being accepted into the program. Also, the bill specifically sanctioned management agreements between tribally-owned businesses and third parties. Finally, the bill defined an Indian tribe as either a federally or state recognized entity.

On May 11, 1983, the Committee held a hearing to consider this legislation. The SBA supported the bill's overall intent to clarify

the statute, but voiced concerns about three of its provisions. The Agency's first area of concern was the provision that would give Indian tribes the presumption of economic, as well as social, disadvantage. SBA officials pointed out that under the 8(a) program, while certain groups are presumed to be socially disadvantaged, there is not, and never has been, any presumption of economic disadvantage given to any group.

The second concern of the SBA dealt with the statutory authorization of management agreements. SBA officials said they feared that statutorily authorizing management agreements would give third parties control of the tribally-owned 8(a) firm and would resurrect the problem of "front companies" and frustrate the program's main purpose of developing the business skills of the minority group.

Finally, the SBA expressed some concern about the bill's definition of an Indian tribe. The agency felt that the definition of either a state of Federally recognized entity was too broad a definition and that it should be limited to allow eligibility for federally-recognized tribes only.

After negotiations between the staff of the SBA and the Committee, a Committee substitute was drafted addressing some of the issues raised in consideration of the bill.

The Committee met in executive session on September 20, 1983, and favorably reported S. 1022 with an amendment in the nature of a substitute.

The Committee amendment addressed the SBA's concerns for maintaining the program's integrity, while also clarifying Congressional policy and intent as to how tribes should be treated in the program. Specifically, the amendment provided that:

Along with Blacks, Hispanics, Asian Pacific Americans and Native American individuals, "Indian tribes" are added to the list of groups, designated in the statute as "socially, disadvantaged";

The tribe must be found to be economically disadvantaged in order for the tribally-owned business to be certified; and the Agency is given guidance as to the factors to consider in making this determination;

The daily management and control of the tribally-owned business must be by members of the tribe; management agreement are not statutorily sanctioned; and

The definition of an Indian tribe includes both state and federally-recognized entities.

The Committee amendment codified current agency policy by recognizing tribes as entities eligible to participate in the 8(a) program on equal terms with businesses owned by other socially and economically disadvantaged persons. Thus, members of Indian tribes would be given the opportunity to develop the skills needed to operate a business, through the 8(a) program.

Chapter XI. Women Entrepreneurs

In recent years, America has witnessed a dramatic influx of women into the entrepreneurial arena, Statistics show that approximately 3 million women have chosen independent business as

their livelihood. From 1972 to 1979, women started their own businesses at a rate five times greater than men. Between 1977 and 1980, the number of female-owned non-farm sole proprietorships increased 33 percent, while male operated nonfarm sole proprietorships increased 11 percent. The years 1980 to 1982 boasted a 10 percent rise in the number of self-employed women, compared to a 1 percent increase for self-employed men during the same period. Businesses owned by women have generated more than $40 billion in receipts nationwide.

The surge in the number of female-initiated enterprises came at a time when women were entering the workforce in record numbers. Since 1970, participation by women in the labor force increased by 85 percent, and women now comprise 43 percent of the nation's total workforce. Many women from this rapidly growing pool of employees are taking their newly honed managerial and business skills and starting their own companies, becoming part of the rapidly growing pool of women employers.

The Committee believes that the essential contributions of women business owners to our economy must be acknowledged and encouraged. It is clear that while women entrepreneurs face many of the same problems as their male counterparts in their quest for economic parity, their success is hindered by additional obstacles not encountered by men. With this in mind, the Committee has held hearings to identify these barriers and possible ways to eliminate them. It has supported legislation and programs designed to offset some of the inherent disadvantages experienced by women business owners treading in what has long been a male dominated domain.

Committee members view their work in the area of promoting women-owned businesses as having just begun. The Committee plans to continue helping women business owners attain equal access to our economic system, so that female entrepreneurship and our nations's economy can achieve their full potential.

WOMEN ENTREPRENEURS: THEIR SUCCESSES AND PROBLEMS

Senator Packwood chaired a hearing on issues and problems affecting women in business on May 30, 1984 in Eugene, Orgeon. Testimony was heard from Maxine Hays, past President, of the Interantional Federation of Business and Professional Women's Clubs, and a panel of women entrepreneurs who described the experiences and difficulties they encountered in opening and operating their individual businesses.

Ms. Hays outlined difficulties facing women business owners:

> The women entreprenuer faces problems that her male counterpart does not. She has more difficulty in building up capital; she is discriminated against when applying for loans; she is less likely to have the educational and occupational experience needed for success; she is penalized for her sex in certain types of insurance; she is excluded from important business networks, and she receives nowhere near her fair share of Government contracts.

Her testimony contained the following specific recommendations to encourage the participation of women in entrepreneurship:

> One, reliable data on women-owned businesses must be collected and made available.
>
> Two, sex discrimination in education must be totally eliminated. Every effort Congress can make in this area would be helpful. We strongly urge the restoration and vigorous enforcement of title IX, as well as the reauthorization of the Women's Educational Equity Act.
>
> Three, equal access to capital and credit must be strengthened. The Equal Credit Opportunity Act has done a great deal to eliminate sex discrimination in consumer credit. Why is this protection missing in business credit? The provisions of this act that protect women from discrimination should be extended to business credit.
>
> Four, opportunities for women in nontraditional fields must be expanded so that women can open businesses in all fields, including the most lucrative ones. Implementation of equal pay for work of comparable value is imperative if women are to be able to start and expand businesses in all fields.
>
> Five, federal procurement opportunities for women must be enhanced. The development of mechanisms and incentives is imperative if women are to partake in their fair share of the lucrative government procurement business. Four-tenths of 1 percent is a pitifull level of participation when we know that women own at least one quarter of all small businesses.

Pam Muscato, Chief Executive Officer, of Four Seasons Advertising Design, pointed out that women themselves are sometimes responsible for the discrimination they encounter. She explained that:

> Many women still have not learned to be professional enough in their dealings with business, both in the way they dress, the way they talk. Women were not raised, a lot of times, to go out and be confident about it, "This is where I'm going and this is what I want." You know, they go around saying, "Can I please have this loan?" This does not go over well with the banker.

Ms. Muscato expressed the need for more professional organizations offering networking opportunities with membership rolls open to both women and men:

> * * * we should have more organizations that represent both sexes. I see a real trend; we have lots of organizations for all women, lots of organizations for all men and Chambers of Commerce and things like that are encompassing both. But I think if we had some small organizations that include both people * * * Because we have to work together. We're not going to go out and work separately, all with women and all with men; we have to work together.

Minority women entrepreneurs' potential for success in seeking financing will be enhanced if they are more sensitive to the issues they might face and build strategies and skills to deal with them.

NATIONAL COMMISSION ON WOMEN'S SMALL BUSINESS OWNERSHIP

Legislation to create a National Commission on Women's Small Business Ownership was introduced by Senator Rudy Boschwitz on June 29, 1984 and referred to the Committee. The measure, known as the Women's Small Business Ownership Act of 1984, would create a 2-year commission, costing about $2 million, to study ways to improve the business environment for women entrepreneurs. It would help to fill the gap in statistics on female enterprise since 1980, the most recent year for available data provided by the Census Bureau, by compiling new figures, reviewing current data collection procedures, and highlighting existing discrepancies and voids. The Commission would be required to make specific recommendations for private sector and federal initiatives to assist women business owners based, partly, on an examination of current government programs and initiatives aiding women-owned firms, and a close look at the special problems facing minority women entrepreneurs.

During his introduction of the bill on the Senate floor, Senator Boschwitz explained the importance of the Commission in eliminating obstacles impeding the success of female enterprise:

> One of the basics of the free enterprise system is access—All should have equal access to our economic system. We are not yet close to achieving economic parity in the marketplace and the pace at which we move is not rapid enough, especially considering the number of people affected. So barriers must be broken down, barriers—economic and others—that deny people equal access to treatment in our society.
>
> The Commission established by this bill will help to identify those barriers and help us, both the Government and private sector, to break down those barriers.

Although the Women's Small Business Ownership Act of 1984 failed to pass the Congress, it raised important issues which the Committee will continue to examine.

NATIONAL INITIATIVE PROGRAM CONFERENCES

Efforts at outreach on behalf of women's business ownership made by SBA have been monitored by and participated in by the Committee.

SBA's Office of Women's Business Ownership [OWBO], develops and coordinates programs designed to increase the viability of female entrepreneurship. It provides management assistance to women business owners and serves as liaison to private corporations, educational institutions, philanthropic and community organizations, public officials, and agencies to promote the growth and development of women-owned businesses. OWBO coordinates its efforts with the Women's Business Ownership Representative located

in each of the SBA's 66 district offices, and with the Women's Business Ownership Coordinator located in each of the SBA's ten regional offices.

In June, 1983, President Reagan announced the National Initiative Program Conferences to assist women business owners. The SBA was directed to coordinate a series of weekend-long conferences using local private sector cosponsors from each host state to help current and potential women entrepreneurs increase their business skills and networking opportunities. More than 20,000 women attended the conferences, coordinated by OWBO.

Each conference revolved around three main activities: workshops, where experienced entrepreneurs shared their knowledge with those intending to open or expand a business; marketplace/purchasing centers, where purchase managers from large corporations and government agencies provided participants with the opportunity to meet with them; and exhibits by merchants of services and supplies available to the female entrepreneur.

Committee members took an interest in all the conferences and actively participated in several of the events by making presentations, conducting workshops, and providing general assistance to the organizers. The Committee believes that the program achieved its goal of improving the business climate for women-owned firms by affording women entrepreneurs an excellent opportunity to increase their business skills and contacts. The Committee looks forward to supporting future programs of this type.

PRESIDENT'S ADVISORY COMMITTEE ON WOMEN'S BUSINESS OWNERSHIP

In addition to announcing the National Initiative Program Conference in June 1983, President Reagan signed Executive Order 12426 at the same time, creating the President's Advisory Committee on Women's Business Ownership (PAC/WBO).

PAC/WBO is chaired by former United States Treasurer Angela Buchanan Jackson and is composed of the following 15 outstanding business leaders representing diverse industries and regions across the country.

The membership includes: Paula Brown, Brown and Associates, Washington, DC; Corlene Hobbs Cathcart, Majo Ranch, Wyoming; Evelyn Echols, International Travel Training Courses, Inc., Illinois; Clara Giordano, Michigan; Jean Hails, Hails Construction of Georgia, Georgia; Mary Jo Jacobi, Special Assistant to the President for Public Affairs (Ad Hoc); Malcolm A. MacKillop, Pacific Gas and Electric Company, California; Robin R. McMillan, Avon Products, Inc., New York; Patricia Nettleship, North Pacific Construction Company, California; Beth Davis Rogers, Davis Pacific Corporation, California; Helen Sanchez-Usitalo, Sanchez-Usitalo Associates, Texas; Susan Sarvis, LTS, Inc., New Hampshire; Donald Vincent Siebert, J.C. Penny Company, New York; SBA liason and coordinator Barbara L. Spyridon; Maeley Tom, Chief Administrative Office of the Assembly, California; Ruth Trotter, The Stork Shop, Tennessee.

The Committee's functions include reviewing the status of women-owned businesses, encouraging financial, educational, and procurement support for female entrepreneurs through the private

sector, and advising the President and SBA Administrator on issues concerning women's enterprise.

PAC/WBO met with the President on March 31, 1984 to discuss the status of women's business ownership, and has conducted five public hearings across the nation on ways to develop and enhance the viability of women's business ownership. The Small Business Committee monitored and participated in these meetings and looks forward to reviewing PAC/WBO's final report and recommendations to the President on improving the professional climate for women entrepreneurs currently being prepared.

The first PAC/WBO hearing was held on March 29, 1984 in Washington, D.C. Chairwoman Jackson began by requesting testimony based on personal experiences and observations regarding the difficulties often encountered by women entrepreneurs and ways to overcome them. Recurring themes concerning these problems surfaced during the hearing and included discrimination, skepticism, and a basic lack of confidence in women by the established business community. It was mentioned that women in business are often hampered by a lack of assertiveness, self reliance, and a "victim mindset," believing that someone will or should come to their aid if they get into trouble.

Many witnesses testified that a strong partnership between the Federal Government and private sector is the cornerstone of solid assistance for women's business enterprise. Additionally, it was stated that women must take better advantage of the existing network of business and trade associations, and not affiliate solely with women's groups.

The second hearing was held on April 12, 1984 in Chicago, Illinois. Problems facing women entrepreneurs discussed by the witness panel included limited access to expansion, risk and venture capital; more frequent denial of credit; shabby treatment by bankers, purchasing agents, and managers, many of whom are men, coupled with resentment by female bankers assigned women customers solely due to their gender; and a lack of marketing skills and experience. Recommendations made by those testifying included establishing a local consortium of women's associations representatives, lawyers, accountants, and bankers to bring women together with local business professionals; streamlining SBA paperwork and better disseminating the agency's printed materials; and obtaining a more complete data base focusing on more than just the number of female owned sole proprietorships.

In addition, the human equation was discussed with regard to the success of women in business. These main motivators for entrepreneurs were discussed: the need to achieve, the desire for independence, job satisfaction, and economic need. It was suggested that women must resolve child care conflicts by securing quality day care for their children.

PAC/WBO conducted its third meeting in Tampa, Florida on April 30, 1984. Witnesses cited impediments to success including cash flow, finding capable and reliable employees, failure of government to enforce nondiscriminatory credit laws, and the observation that more is generally expected and demanded of women in business. Bankers often give close scrutiny to a woman's loan application, requesting more collateral than they would from a man.

Banks often ask for a husband's co-signature before approving a loan, while a wife's co-signature is infrequently requested.

Additionally, it was claimed that women fall victim to the "hobby mindset," battling for credibility because it is perceived that they are in business for fun, not profit.

At the fourth hearing which took place in San Antonio, Texas, on May 2, 1984, witnesses commented on the disproportionate number of women-owned businesses falling in the retail and service-oriented categories. These businesses are vulnerable to changes in the economy and exhibit a high rate of failure. It was stated that women often lack the expertise, experience, and training to enter non-traditional business arenas, and an effort should be made to correct this situation through education. It was noted that entrepreneurial courses are currently missing from university curriculums and should be included. It was also mentioned that women's business enterprise is given backseat coverage by the media, and a strategy must be developed to bring the issue into the forefront.

The fifth hearing was held in Los Angeles, California on May 31—June 1, 1984. Witnesses testified in favor of a director of women business owners, with careful verification of 51 percent female ownership for all listed firms, and a detailed summary of the services or goods the company can provide. The role of the Federal Government in stimulating women's business enterprise was also highlighted. It was suggested that the attitude and approach taken by government often sets the tone of action for the private sector. A demonstrated, ongoing commitment by the Federal Government to the growth of female enterprise is important to its success. The desire was expressed for government to examine areas affecting women's entrepreneurship including govermental regulations, education, and enforcement of anti-discrimination laws, acting as a catalyst for the private sector to follow.

DIXON AMENDMENT

On May 11, 1983 Chairman Weicker held a hearing to consider S. 1022, legislation aiding American Indians in business. During the consideration of this bill, Senator Alan Dixon proposed an amendment to create a provision under section 8(d) of the Small Business Act requiring prime contractors to set goals for subcontracting with women-owned firms and to modify section 15 of the Act to mandate that federal agencies establish overall procurement goals for businesses owned by women. Senator Dixon withdrew the amendment pending further study of its implications by the Committee and said that he would offer it again during the Senate's consideration of S. 1022. Unfortunately, the measure died on the Senate legislative calendar, and the amendment was never reconsidered.

Senator Dixon and Levin spoke favorably of the amendment in the Committee's report on S. 1022:

> There are many reasons to support the amendment. Women in business have experienced disadvantages in access to Federal procurement opportunities, and sections 8(d) and 15 of the Small Business Act were designed to pro-

vide a straight forward mechanism to redress those impediments. Section 8(d) refers to a prime contractor using its "best" efforts in subcontracting only, and in our view the inclusion of women business owners will not "harm" other beneficiaries of the program.

Finally, adding a specific reference to women business owners clarifies the 1978 legislative history concerning their eligibility for these programs. As an example, the Conference Committee report on the legislation that put section 8(d) into the law states that:

The Committee intends that SBA give most serious consideration to, among others, women business owners. The Committee notes that sex discrimination, whether overt or subtle, does result in business impediments which are not generally common to all small business owners.

The amendment was designed to give statutory recognition to women business owners, without addressing the issue of whether or not they are disadvantaged. Under the amendment, women entrepreneurs would have to meet the same eligibility requirements as other small businesses owners in order to take advantage of the procurement assistance provisions of the Small Business Act. Senators Dixon and Levin explained,

(We) do not believe that it was a specific Congressional intent to exclude non-minority women business owners from benefitting from these Small Business Act provisions along with other minority business owners. However, that is how the Act is being implemented. Therefore, this simple modification to section 8(d) and 15 of the Small Business Act, will insure that non-minority women will be given the same opportunities to participate in Federal Government contracts and subcontracts.

Although this amendment never passed the Congress, it highlighted important issues that the Committee believes merit future consideration.

HEARINGS ON FEDERAL CONTRACTING OPPORTUNITIES FOR MINORITY AND WOMEN-OWNED BUSINESSES AND THE 8(d) SUBCONTRACTING PROGRAM

The Committee conducted two field hearings in Washington State, presided over the Senator Slade Gorton, to examine the 8(d) Subcontracting Assistance Program, and the Federal Government's role in assuring maximum procurement opportunities for minority and women-owned businesses.

In 1978, Public Law 95-507 was enacted, bringing small and small disadvantaged businesses into the government procurement process. The hearings, which took, place in Tacoma, Washington on December 19, 1983, and in Pasco, Washington on December 21, 1983, explored prime contractors compliance with this law. In addition, a number of advocacy groups representing small and large contractors, minority, and women-owned businesses presented their views on how to make the program more responsive to the needs of their respective constituencies.

CHAPTER XII. COMMUNITY OUTREACH

SMALL BUSINESS LEADERS AND THEIR PRIORITIES

Each Congress presents new and varied issues to be confronted by the legislative branch of the Federal Government. This is particularly true for the Committee on Small Business and its jurisdictions. The dynamic and rapidly changing nature of business and economic growth often creates completely unanticipated problems, offers vast new entrepreneurial opportunities, and fundamentally alters issues previously under debate. The Committee must be in a position of knowing the most current state of small business and be able to react in an expeditious, but appropriate, manner.

In an effort to inform the Committee's Members of the most immediate concerns of small business and give them the opportunity to explore areas that have substantially changed or are unknown to them, and gauge the political climate surrounding various proposals and issues, the Committee has sought to bring together the best and most respected voices on small business early in each Congress strictly for the use of the Committee. Every other year in January or February, these individuals and the Committee meet for one day in Washington and explore the broad range of issues that involve the Federal Government and small business policy, thereby assisting the Committee in setting its legislative agenda. The organization of this meeting is very informal providing both the chance for individuals to present prepared testimony and to interact with members and staff on a more personal basis.

In 1983, the conference of business leaders and the Committee took place on February 25. Those appearing or later submitting material were the following: John M. Albertine, President, American Business Conference; American Association of Minority Enterprise Small Business Investment Companies; American Electronics Association; Jerry L. Arnold, Associate Professor, School of Accounting, University of Southern California; Associated Gerneral Contractors of America; William D. Barth, member, Committee on Small Business, American Institute of Certified Public Accountants; Lydia Barbara Bashwiner, Executive Director, National Small Business, Government Contractors Association; William J. Birkhofer, Director of Governmental Affairs, American Consulting Engineers Council; Gene Bottoms, Executive Director, American Vocational Association; James G. Bourie, Director of Economics, The American Legion; Clarence H. Braddock, President, Black Presidents' Roundtable; Robert Brockhaus, Small Business Institute Director's Association; T. W. Burge, Vice President, Machinery Dealers National Association; Daniel W. Cannon, Director of Environmental Affairs, National Association of Manufacturers; William B. Cherkasky, Executive Vice President, International Franchise Association; William J. Cochran, Executive Director, Michigan Job Development Authority; Benjamin Y. Cooper, Vice President, Government Affairs, Printing Industries of America, Inc.; Horst G. Denk, Chairman, Independent Bakers Association; Stephen W. Denlinger, President, Latin American Manufacturers Association; Francis X. Doyle, Legislative Advocate, Small Business Service Bureau, Inc.; Susan J. Duncan, Independent Writer, National

Audio-Visual Association; Ralph Engel, President, Chemical Specialties Manufacturers Association; John H. Fitch, Jr., Vice President, Government Relations, National Association of Wholesalers-Distributors; Philip P. Friedlander, Jr., Executive Vice President, National Tire Dealers and Retreaders Association; Joseph Greloch, National Legislative Chairman, Independent Electrical Contractors, Inc.; Charles E. Ing, Assistant Director of Legislative Affairs, National Automobile Dealers Association; James P. Lemonias, President, National Association of Metal Finishers; Virginia Littlejohn, on behalf of the National Association of Women Business Owners; Sheldon I. London, representing Jewelers of America, Inc., National Decorating Products Association, National Retail Hardware Association, Photo Marketing Association International, and Retail Floorcovering Institute; Basil J. Mezines, representing the Automotive Warehouse Distributors Association; and Louis Mirman, President, National Society of Public Accountants.

Philip W. Moore, Jr., President, National Family Business Council, Inc.; National Association of Home Builders; National Association of Securities Dealers, Inc.; National Tooling and Machining Association; Patrick C. O'Connor, Washington Representative, American Supply Association; Joseph F. O'Neil, Executive Secretary, American Council of Independent Laboratories, Inc.; Kenton Pattie, National Audio-Visual Association; Roger Peugeot, on behalf of the National Association of Plumbing-Heating-Cooling Contractors; John C. Rennie, President-elect, Small Business United; Christine Russell, Legislative Counsel for the Small Business Center, U.S. Chamber of Commerce; James T. Rogers, Director of State Relations and Acting Director of Government Relations, National Restaurant Association; John S. Satagaj, General Counsel, Door and Hardware Institute; Jim Schuyler, Staff Vice President and Legislative Counsel, National Association of Home Builders; Arleen Shulman, Federal Affairs Manager, National Solid Wastes Management Association; Small Business Legislative Council; Dallas E. Smith, Partner In Charge, Private Business Advisory Services; Walter B. Stults, President, National Association of Small Business Investment Companies; Randal C. Teague, Counsel, The Small Business Coalition for Pollution Control; Dewey Thomas, Jr., Executive Director, National Association of Minority Contractors; Gil Thurm, Vice President and Legislative Counsel of the Government Affairs Division, National Association of Realtors; J. Richard Troll, Executive Director, Association of Independent Corrugated Converters; Vietnam Veterans Foundation; Sylvia von Bostel, Associate Director, Professional Services Council; Paralee White, Vice President, National Association of Women Government Contractors; William E. Woods, Executive Vice President, National Association of Retail Druggists; John R. Yost, Chairman, Small Business Committee, Synthetic Organic Chemical Manufacturers Association, Inc.; Denis R. Zepar, on behalf of the National-American Wholesale Grocers' Association.

The meeting resulted in a vigorous and constructive session in which many of the vital aspects of small business ownership and operation were examined. All of the testimony and discussion was compiled by the Committee in a 900-page document that served as broad guide to much of the Committee's activity during the 98th

Congress. Among the areas most widely discussed were capital formation and retention, government procurement, product liability, tax reform, international trade, antitrust policies and the growing federal budget deficit.

NATIONAL ADVISORY COUNCIL

The National Advisory Council of the Committee on Small Business provides the members of the Committee the opportunity to regularly meet with and receive input from men and women around the country who own and operate small businesses. These individuals know first-hand the conditions and issues surrounding the small businesses and are in the best position to identify and judge the difficulties experienced by the small concern, assess current economic conditions, and offer new ideas and proposals which the Federal Government can pursue.

Established in 1981 at the urging of Chairman Weicker and then-Ranking Minority member Sam Nunn, the Council is made up of 25 small business owners who are chosen personally by the members of the Committee. Council members are expected to communicate regularly with the Committee throughout the year, and at least one formal meeting of the Council members and the Committee occurs each year, usually in the spring. The Council members pay the expenses they incur in attending this meeting and participating in other Council activities.

On April 12, 1983, the third meeting of the Advisory Council took place in the Committee's hearing room. Those Council members present were: Shaw Mudge, Sr., Co-Chairman, Shaw Mudge & Co., Connecticut; Asta Ball, Miniature Nut & Screw Corp., Connecticut; Herb R. Bowden, Sencore, Inc., South Dakota; Mary Diener, Diener & Associates, Inc., North Carolina; Walter Floss, Jr., Floss Insurance Agency, New York; James Gillanders, Gillanders & Stark Development Corp., Arizona; Paul H. Hebb, Hebb Investment Co., Oregon; Edna Hennessey, Cosmetic Specialty Labs., Inc., Oklahoma; Bruce Hopewell, Lincoln Business Help Associates, Inc., New York; Oscar Hornsby, Oscar Hornsby, Inc., Kentucky; Michael Lefkiades, Michigan Coni Islands, Inc., Michigan; Forrest H. Mertz, Mertz, Inc., Oklahoma; Frederick E. Mohs, Esq., Mohs, McDonald & Widdar, Wisconsin; Bill Nourse, Brookmeade Hardware & Supply, Tennessee; Arthur S. Obermayer, Moleculon Research Corp., Massachusetts; James B. Rhoads, Esq., Hyatt & Rhoads, Georgia; Larry A. Stanley, Empire Bolt & Screw, Inc., Washington; James Walters, General Business Forms, Inc., Arkansas.

In addition to full discussions with Committee members and staff, the Council also met with Frank S. Swain, Chief Counsel for Advocacy at the SBA, John R. Evans, a Commissioner with the Securities and Exchange Commission (SEC), and other federal officials. A wide variety of issues were debated, including the management and performance of SBA, capital formation proposals and tax reform. Two specific resolutions, one endorsing the Product Liability bill sponsored by Senator Robert Kasten, and the other endorsing half a dozen proposals of the SEC's Government Business Forum on Small Business Capital Formation, were passed by the Council. The text of both measures follow:

RESOLUTION ON PRODUCT LIABILITY

Whereas the rules determining the liability of product sellers for product-related injuries has been developed almost exclusively by state judges on a case-by-case basis varying from state to state, and sometimes in direct conflict;

Whereas, modification of the case law tort system by 31 states has failed to uniformly outline the basic elements of product liability claims or to uniformly define standards for manufacturer responsibility;

Whereas, because of this situation, manufacturers doing business in interstate markets and whose products may be found in any jurisdiction continue to face uncertainty about what rules of law may apply;

Whereas, that uncertainty restricts the ability of many firms, especially small businesses, to sell their products in interstate markets;

Whereas, that uncertainty can also lead to higher insurance costs which are reflected in higher consumer prices; therefore, be it

Resolved, That the National Advisory Council to the Senate Committee on Small Business urges the Chairman and Members of the Senate Small Business Committee to cosponsor and support S. 44, the Product Liability Act, as the best means of bringing uniformity and certainty to law and to stabilize what has become a serious burden on interstate commerce.

RESOLUTION ON SEC GOVERNMENT BUSINESS FORUM ON SMALL BUSINESS CAPITAL FORMATION

Proposed Resolution for National Advisory Council to the U.S. Senate Committee on Small Business;

Whereas, these are times of high real interest rates, large numbers of business failures, and other economic hardships;

Whereas, small business serves as the most prolific job creator in the American economy;

Whereas, small business also continues to remain the major innovating and job creating force in our economy;

Whereas, affordable growth capital is essential for a business to purchase new equipment or otherwise expand, crucial to the success of any small business;

Whereas, the Securities and Exchange Commission—sponsored Government—Business Forum on Small Business Capital Formation concluded with 37 nearly unanimous recommendations on small business capital formation, several of which are included in the Small Business Capital Formation Tax Act, soon to be introduced by Senators D'Amato, Weicker, Nunn, and Cochran;

Whereas, this legislation also reflects the consensus of the results of a nationwide survey of high-level small business executives; it is now therefore

Resolved, That, the National Advisory Council to the U.S. Senate Committee on Small Business encourages and supports legislation which would implement the best and most cost-effective recommendations of the SEC Government Business

Forum on Small Business Capital Formation—particularly—allowing the creation of a small business Participating Debenture, a reduction in small business corporate tax rates, an increase in the capital gains exclusion for equity investments in small businesses, the establishment of a 20 percent maximum corporate capital gains tax rate attributable to equity investment in small businesses, a 10 percent tax credit for investments in small businesses, permitting small businesses which elect to do so to use the cash receipts method of accounting, and repeal of section 385 of the Internal Revenue Code.

The fourth meeting of the National Advisory Council occurred in Washington on March 15, 1984. The following members of the Council were present: Shaw Mudge, Sr., Chairman, Shaw Mudge & Co., Connecticut; Asta Ball, Vice President, Miniature Nut & Screw Corp., Connecticut; Herb R. Bowden, President and Chief Executive Officer, Sencore, Inc., South Dakota; Mary Diener, Diener & Associates, Inc., North Carolina; William E. Fletcher, Termiflex, Inc., New Hampshire; Walter Floss, Jr., Floss Insurance Co., New York; Bruce Hopewell, Lincoln Business Help Associates, New York; Michael Lefkiades, Michigan Coni Islands, Inc., Michigan; Forrest H. Mertz, Mertz, Inc., Oklahoma; Frederic E. Mohs, Mohs McDonald & Widdar, Wisconsin; Arthur S. Obermayer, Moleculon Research Corp., Massachusetts; Jann Olsten, Stacker Ravich & Simon, Minnesota: James Walters, President, General Business Forms, Inc., Arkansas.

The growing federal budget deficit and its impact on the economy, specifically interest rates, was the issue of greatest concern to Council members. The Council discussed many of the implications of the government's indebtedness and the various solutions advocated for dealing with it and resolved that "any effective deficit reduction package should include both spending reductions, and revenue increases, provided that any revenue package steer away from provisions with retroactive application, or any other provisions that fail to take into account the planning needs of small businesses." In addition, the Council heard the views of three important players in the deficit debate; Senator Robert Dole, Chairman of the Senate Finance Committee; Rudolph Penner, Director of the Congressional Budget Office; and Preston Martin, Vice Chairman of the Federal Reserve Board. The Council also formally declared its support for the reconvening of the White House Conference on Small Business in 1985, the enactment of a measure to allow small business owners to pay unemployment insurance premiums on themselves, and, finally the enactment of legislation which would eliminate procurement procedures and practices which serve to limit small business' ability to compete for Federal Government contracts.

Chairman Weicker used the occasion of the meeting and the passage of the latter resolution to announce that such procurement reform legislation would be introduced in the Senate shortly thereafter (S. 2489, the Small Business Competition Enhancement Act of 1984, was put forth on March 29).

The full text of each of the four resolutions passed by the Council follows:

RESOLUTION ON FEDERAL BUDGET DEFICITS

Whereas, large Federal deficits threaten the continuance of the current economic recovery, and definitely contribute to higher rates, higher inflation, and higher unemployment;

Whereas, small businesses will be particularly hard hit if higher interest rates persist, and if the current economic recovery stagnates;

Whereas, if the Congressional Budget Office estimates that without any action by the President or Congress deficits will exceed $250 billion by Fiscal Year 1987;

Whereas, these deficits are a result of both uncontrolled Federal spending and reduced revenues;

Whereas, any effective deficit reduction package should included both spending reductions, and revenue increases, provided that any revenue package steer away from provisions with retroactive application, or any other provisions that fail to take into account the planning needs of small businesses; therefore, be it

Resolved, That the National Advisory Council to the Senate Committee on Small Business calls upon the President and the Congress of the United States to take comprehensive action this year to reduce the Federal deficit, in order to keep interest rates at a level at which small businesses can grow.

PROPOSED RESOLUTION ON RECONVENING THE WHITE HOUSE CONFERENCE

Whereas, the small business sector is the engine that drives the economy;

Whereas, small businesses are responsible for 80 percent of the new jobs created and 50 percent of all new innovation;

Whereas, the 1980 White House Conference on Small Business set forth an agenda of sixty recommendations for Federal action to improve the environment for small businesses;

Whereas, four years have elapsed since that White House Conference on Small Business and a large majority of these recommendations have been acted upon;

Whereas, the small business community recognizes the need to update and review its role in the economy and its relationship with the Federal Government;

Whereas, in 1979 Congress appropriated $4 million to provide funding for the White House Conference;

Whereas, the Advisory Council to the Senate Committee on Small Business believes strongly that the small business owners of this nation contribute significantly to the general health and prosperity of our country: Therefore, be it

Resolved, That, the National Advisory Council to the Senate Small Business Committee calls upon the President and the Congress of the United States to reconvene the White House Conference in 1985, and urges the Congress to appropriate funds necessary to insure a successful conference.

RESOLUTION ON UNEMPLOYMENT PREMIUMS PAID BY SMALL BUSINESS OWNERS

Whereas, current federal legislation denies states the option of allowing owners of businesses to choose whether or not they desire to pay unemployment insurance premiums on themselves;

Whereas, federal law dictates that small business owners must pay unemployment insurance premiums on themselves; the only time they may collect unemployment insurance is when their business closes and ceases to exist; and they are not permitted to lay themselves off during seasonal downturns in business;

Whereas, the initiation and enactment of appropriate legislation correcting this current injustice would be most consistent with our government's expressed desire to eliminate unnecessary and encumbering regulations, regulations so punitive to those investing both time and capital in business endeavors;

Whereas, currently, federal regulations work to prohibit individual states from initiating legislation making the payment of premiums a voluntary decision and, if such legislation were enacted at the state level, the various states would lose eligibility for federal funds;

Whereas, members of the small business community throughout the nation have expressed their desire to be excluded from eligibility for unemployment insurance;

Whereas, insofar as the limited applications of the current law is of minimal value to the owners of small businesses, and the fiscal impact of allowing the owners of businesses to choose whether or not they desire to pay unemployment insurance premiums on themselves would be negligible: Therefore, be it

Resolved, That, the National Advisory Council to the Senate Committee on Small Business, calls upon the President and the Congress of the United States to enact legislation granting individual states the opportunity to extend a measure of just relief to business owners, who are currently ineligible to collect unemployment insurance under state law, the right to choose whether or not they desire to pay unemployment insurance premiums on themselves.

PROPOSED RESOLUTION ON FEDERAL PROCUREMENT

Whereas, the public funds expended by the United States Government for the procurement of supplies, services, research and development, and construction have increased annually, while the percentage of these funds awarded to small business has steadily declined in recent years;

Whereas, the publicized revelations concerning the procurement of spare parts, documented abuses, in the current procurement system, caused in large part by the lack of competition, especially by small business;

Whereas, the effective elimination of so many highly qualified small businesses from the federal procurement market has contributed to the erosion of the Nation's industrial base, and

Copies of the Handbook may be obtained by requesting Stock No. 052-071-00680-0 from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC, 20402. Telephone orders may be placed by phoning the Order Desk at 202-783-3238. The purchase price is $7.00.

CHAPTER XIII. PAPERWORK REDUCTION AND REGULATORY SIMPLIFICATION—PAPERWORK REDUCTION ACT OF 1980 (P.L. 96-511)

COMMITTEE OVERSIGHT OF IMPLEMENTATION

On November 15, 1983, the Subcommittee on Government Regulation and Paperwork, chaired by Senator Orrin Hatch, held an oversight hearing on the implementation of the Paperwork Reduction Act of 1980. The focus of the hearing was to evaluate the Act's effectiveness in reducing government paperwork burdens on America's small businesses, and to receive recommendations for improving its implementation.

Frank S. Swain, SBA's Chief Counsel for Advocacy, testified on the findings and recommendations of the six field hearings on paperwork reduction, conducted by the Office of Advocacy, at which testimony was received from over 140 small business witnesses. These hearings strongly suggested that small business has not felt the results of the 29 percent reduction in paperwork over the 2-year period since the Act's passage, although this reduction surpassed the 25 percent mandated by the act. Witnesses at the Advocacy hearings focused on three especially persistent sources of paperwork burdens: those generated by the IRS, those generated by the federal procurement process, and those generated by the business census conducted each five years by the Bureau of the Census at the Department of Commerce.

Following Mr. Swain's testimony, Frank H. Carlton, representing the National Society of Public Accountants, testified before the Committee. Mr. Carlton focused on the paperwork burdens presented by the 1982 Economic and Agricultural Census, but also touched upon other annual business data collection activities of various agencies of government. In particular, he noted that many small businesses cannot identify a beneficial purpose for many of these data collection activities, from either the government's perspective or the perspective of the small business owner attempting to comply with the data request.

> The issue is not that small businesses misunderstand the importance and the value of statistical data. The issue is that small businesses do not welcome any additional paperwork or recordkeeping requirements that consume their resources and energies without a corresponding benefit.

Testimony was next received on the paperwork burdens relating to the IRS from Nicholas Lascari, CPA, a member of the Independent Business Association of Wisconsin (IBA-Wisconsin) and Small Business United, and Carl Beck on behalf of the National Small Business Association and the Business Advisory Council on Federal Reports. Mr. Lascari presented the results of a survey conducted in July 1983 by IBA-Wisconsin. It confirmed the findings presented by

the Chief Counsel for Advocacy that small business does not as yet perceive a reduction in paperwork, despite the attainment of 25 percent reduction mandated by the Paperwork Reduction Act. Mr. Lascari also shared with the Subcommittee his efforts to obtain a tax preparer federal identification number, a process that proved to be so protracted and labyrinthine as to be the paperwork analog to the litigation described in Dickens' Bleek House. Mr. Beck noted that given the recent addition of IRS paperwork to the overall ICB, it would be unrealistic to expect any active progress to appear until 1985. He also noted that as a small business government contractor, he strongly supported the new efforts to attack the very substantial paperwork burdens associated with all phases of the procurement process, from solicitation and award, through contract administration, to final payment and contract close-out.

Next, the Subcommittee received additional testimony on the paperwork burdens associated with the federal procurement process from Richard Ludwig, President of Lavelle Aircraft Company, on behalf of the National Federation of Independent Business [NFIB] and Martin Klein, President of Klein Associates, representing the Smaller Business Association of New England [SBANE]. They provided the Subcommittee with additional examples and recommendations for lessening the obstacles confronted by small business concerns trying to market to the Federal Government.

Finally, Christopher C. DeMuth, Administrator of the Office of Information and Regulatory Affairs summarized the Administration's view of the progress that has been made since the passage of the Paperwork Reduction Act:

> We believe we have made substantial progress in this area in the 3 years since the Paperwork Reduction Act was passed. We have, according to our current estimates, substantially beat the act's goal, which many thought was unachievable in 1980, of reducing the then-existing inventory of Federal paperwork by 25 percent by the end of fiscal year 1983. In total, over 300 million hours of paperwork burden annually have been eliminated by this Administration. That is 150,000 work-years of effort every year that are not available for productive effort. We are auditing these figures, and before the end of 1983, when we issue our paperwork budget for 1984, we will have the exact final figures on this. We think that is a major accomplishment. We are glad to see that at least one budget in Washington is going down absolutely, not just relatively. And these measures do not even include the substantial efforts of the last 3 years in identifying, controlling, and where possible eliminating newly identified paperwork that came under paperwork controls as a result of the Paperwork Act itself.
>
> Last March, OMB issued a regulation of its own for controlling paperwork burdens throughout the Government. It settled many issues which had been contentious within the bureaucracy, such as paperwork controls for regulations, procurement, and information disclosure requirements. We also put in place a set of strict paperwork control policies,

such as a 3-year maximum for record retention requirements, minimum response times, maximum numbers of copies and maximum frequency of information collection. Among these guidelines was the requirement that agencies, wherever possible, establish separate and simplified paperwork requirements for small businesses.

The Committee transmitted the record of the hearing to the Governmental Affairs Committee's Subcommittee on Information Management and Regulatory Affairs, chaired by Senator John C. Danforth with Senator Lawton Chiles as Ranking Minority Member, to assist them in their consideration of the Paperwork Reduction Act Amendment of 1984. Senators Chiles and Danforth were the principal sponsors of the Paperwork Reduction Act of 1980.

REAUTHORIZATION OF THE OFFICE OF INFORMATION AND REGULATORY AFFAIRS

The legislative authorization for the Office of Information and Regulatory Affairs (OIRA), contained in the Paperwork Reduction Act of 1980, expired on September 30, 1984. Two bills seeking reauthorization were considered by the House and Senate, but neither was passed before the adjournment of the 98th Congress.

On May 24, 1983, Representative Jack Brooks, Chairman of the Government Operations Committee, introduced H.R. 2718, the "Paperwork Reduction Act Amendments of 1983", cosponsored by Representative Frank Horton, the Committee's Ranking Minority Member. A hearing on H.R. 2718 was held on April 27, 1983 by the Government Operations Committee's Subcommittee on Legislation and National Security. The bill was reported with amendments to the full Committee on April 28. On May 3, 1983, H.R. 2718 was considered by the full Government Operations Committee and ordered favorably reported with amendments. H.R. 2718, as amended, was reported to the House on May 16, (H. Rept. 98-147), and placed on the calendar. It was passed by a voice vote on November 7, 1983.

"The Paperwork Reduction Act Amendments of 1984," S. 2433, was introduced in the Senate on March 22, 1984 by Senator Danforth, with Senators Chiles, Durenberger, and Levin as original cosponsors. On April 4th, a hearing was held by the Governmental Affairs Committee's Subcommittee on Information Management and Regulatory Affairs. S. 2433 was favorably approved with amendments by the Subcommittee on July 24, 1984. It was favorably reported (S. Rpt. 98-576) by the Governmental Affairs Committee on August 6th and placed on the Senate Calendar.

Although the reauthorization of OIRA and the statutory establishment of new paperwork reduction goals were strongly supported by the small business community, neither bill was acted upon before the adjournment of the 98th Congress. Given the small business community's universal demand for paperwork reduction, renewed efforts can be expected in the 99th Congress.

IMPLEMENTATION OF THE REGULATORY FLEXIBILITY ACT OF 1980 (P.L. 96-354)

Given the disproportionate impact of federal regulations on small businesses, the Committee has maintained a strong interest in the implementation of the Regulatory Flexibility Act of 1980 (P.L. 96-354). The law requires that agencies consider the impact of their regulatory activities on small businesses throughout the rulemaking process. To assure small business participation early in the rulemaking process, the Act requires the publication of a regulatory flexibility agenda every six months to give interested persons advance notice of the agency's planned rulemaking activities. During notice and comment rulemaking, the Act requires an agency to analyze the impact of a proposed rule on small business concerns to ensure that it does not unnecessarily inhibit the ability of small business concerns to compete. To assure that the notice of a proposed rule reaches the maximum number of potentially impacted small business concerns, affording them a meaningful opportunity to comment, the Act encourages the agency promulgating the regulation to supplement publication in the Federal Register with notification methods that reach-out to small entities likely to be most significantly impacted. Finally, the Regulatory Flexibility Act requires periodic review of existing regulations, to determine if changes are warranted to accommodate impacts on small business concerns that might have not been present at the time a regulation was initially promulgated.

The Office of the Chief Counsel for Advocacy is charged by the Regulatory Flexibility Act with monitoring agency implementation and to annually report to the President and the Congress on agency compliance with the Act's requirements. Advocacy monitors the Federal Register, reviewing each proposed regulation to assess its potential impact on small business and to evaluate agency efforts to comply with the Act. After consultation with various small business groups, Advocacy comments on particularly significant proposed regulations and encourages agency officials to reach out to small business groups most significantly impacted by the proposed regulation. In addition, Advocacy may alert a small business group to a proposed regulation of specific interest to them to provide the maximum available time to shape its comments.

The Office of the Chief Counsel for Advocacy issued two annual reports to the Congress during the 98th Congress—February 1983 and February 1984. These reports reflect a diversity of effort by the various agencies to implement as the requirements of the Act. Some agencies question the applicability of the Act to their rulemaking activities, while others question the scope of the Act's requirements.

The Internal Revenue Service (IRS) maintains that the Act's requirements do not apply to their regulations since they are not legislative regulations subject to the Administrative Procedures Act (APA). Rather, the IRS considers its regulations to be interpretative regulations, that is, designed only to assist the agency in implementing the Internal Revenue Code. To be subject to the Regulatory Flexibility Act, an agency's rulemaking activity must be conducted pursuant to the APA or "other law" requiring notice and

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comment rulemaking procedures. The February 1984 report by Advocacy reflects that IRS continues to maintain that is regulations are not covered by the APA or the Regulatory Flexibility Act.

The applicability of the Regulatory Flexibility Act to procurement regulations continued to be a matter of concern during the 98th Congress. The problem was highlighted in the February 1984 Report of the Chief Counsel for Advocacy. In essence, the position of the Office of Federal Procurement Policy, and the procuring agencies, most noticably the Department of Defense, is that procurement regulations are specifically exempted from the notice and comment rulemaking requirements of the APA, and no "other law" requires notice and comment on procurement regulations. Hence, to the extent procurement regulations are subjected to a regulatory flexibility analysis, such compliance efforts are purely voluntary. The Chief Counsel for Advocacy has steadfastly opposed this view, but urged that a legislative remedy would put the issue to rest most effectively. Many small business groups have similarly advocated a legislative remedy.

Section 302 of Public Law 98–577, the "Small Business and Federal Procurement Competition Enhancement Act of 1984" amended the Office of Federal Procurement Policy Act to provide for Federal Register publication and an opportunity for public comment on proposed procurement policies, regulations, procedures, or forms that are significant. This should resolve the issue of the applicability of the Regulatory Flexibility Act to procurement regulations.

APPENDIXES

APPENDIX A

Membership of the Committee on Small Business, 98th Congress

LOWELL WEICKER, JR., Connecticut, *Chairman*

BOB PACKWOOD, Oregon
ORRIN G. HATCH, Utah
RUDY BOSCHWITZ, Minnesota
SLADE GORTON, Washington
DON NICKLES, Oklahoma
WARREN RUDMAN, New Hampshire
ALFONSE M. D'AMATO, New York
BOB KASTEN, Wisconsin
LARRY PRESSLER, South Dakota

DALE BUMPERS, Arkansas
SAM NUNN, Georgia
WALTER D. HUDDLESTON, Kentucky
JAMES R. SASSER, Tennessee
MAX BAUCUS, Montana
CARL LEVIN, Michigan
PAUL E. TSONGAS, Massachusetts
ALAN J. DIXON, Illinois
DAVID BOREN, Oklahoma

APPENDIX B

Subcommittees of the Committee on Small Business, 98th Congress

CAPITAL FORMATION AND RETENTION

MR. PACKWOOD, *Chairman*

MR. HATCH	MR. BUMPERS
MR. BOSCHWITZ	MR. SASSER

GOVERNMENT REGULATION AND PAPERWORK

MR. HATCH, *Chairman*

MR. PRESSLER	MR. HUDDLESTON

URBAN AND RURAL ECONOMIC DEVELOPMENT

MR. D'AMATO, *Chairman*

MR. WEICKER	MR. DIXON

GOVERNMENT PROCUREMENT

MR. NICKLES, *Chairman*

MR. RUDMAN	MR. LEVIN
MR. KASTEN	MR. BUMPERS

PRODUCTIVITY AND COMPETITION

MR. GORTON, *Chairman*

MR. NICKLES	MR. TSONGAS

INNOVATION AND TECHNOLOGY

MR. RUDMAN, *Chairman*

MR. PACKWOOD	MR. BAUCUS

EXPORT PROMOTION AND MARKET DEVELOPMENT

MR. BOSCHWITZ, *Chairman*

MR. GORTON	MR. HUDDLESTON

SMALL BUSINESS: FAMILY FARM

MR. PRESSLER, *Chairman*

MR. D'AMATO	MR. NUNN

ENTREPRENEURSHIP AND SPECIAL PROBLEMS FACING SMALL BUSINESS

MR. KASTEN, *Chairman*

MR. WEICKER	MR. BOREN

The Chairman and the Ranking Minority Member of the full Committee are members *ex officio* of all subcommittees.

APPENDIX C

Hearings of the Committee on Small Business,
98th Congress

Full Committee or Subcommittee	Date	Subject
Full	Feb. 2, 1983	Open hearing on S. 272, A Bill to Improve Small Business Access to Federal Procurement Information, and S. 273, The Minority Small Business Pilot Procurement Act of 1983.
Full	Feb. 8, 1983	Open hearing on the Oversight of the Small Business Administration's Small Business Development Center Program. (Atlanta, Georgia).
Full	Feb. 11, 1983	Open hearing on the Obstacles to Exporting Faced by Small Businesses. (Seattle, Washington).
Full	Feb. 17, 1983	Open hearing on S. 499, A bill to Require the Usage of Tax-Exempt Financing in connection with the Small Business Administration's Section 503 Loan Program.
Innovation and Technology Subcommittee	Mar. 16, 1983	Open hearing on the Oversight of Public Law 97-219, The Small Business Innovation Development Act.
Full	Mar. 24, 1983	Open hearing on Federal Minority Business Development Program.
Full	Mar. 29, 1983	Open hearing on the SBA Disaster Loan Program. (Clinton, Ark.)
Full	Apr. 5, 1983	Open hearing on Umbrella Contracting and its Impact on Small Business.
Export Promotion and Market Development Subcommittee.	Apr. 7, 1983	Open hearing on Export-Import Bank Financing for Small Businesses.
Full	Apr. 13, 1983	Open hearing on S. 742, 743, 744, and 745, Bills to amend the Small Business Act and the Small Business Investment Act of 1958.
Full	Apr. 13, 1983	Open hearing on the Nomination of Mary F. Wieseman to be Inspector General of the Small Business Administration.
Small Business: Family Farm Subcommittee	Apr. 27, 1983	Open workshop on Critical Issues Facing Family Farm Owners.
Full	May 11, 1983	Open hearing on S. 1022, A Bill to Make Small Businesses owned by American Indian Tribes Eligible for the SBA 8(a) Program.
Full	June 8, 1983	Open hearing on S. 628, Legislation dealing with Farmers' Eligibility in the SBA Disaster Program.
Small Business: Family Farm Subcommittee	June 9, 1983	Open hearing on the Impact of the Payment-In-Kind Program on Agricultural Support Industries.
Small Business: Family Farm Subcommittee	June 29, 1983	Open hearing on Impact of Canadian Agricultural Imports and Its Effect on the Small Business Community.
Full	July 6, 1983	Joint hearing before the Senate Small Business Committee and the House Small Business Committee on the Small Business Development Center Program (Part 1) (Seattle, Washington).

Urban and Rural Economic Development Subcommittee.	July 13, 1983	Open hearing on Various Small Business Capital Formation Proposals and Their Job Creation Potential.
Full	July 19, 1983	Open hearing on S. 1429, Legislation to Extend and Strengthen the Small Business Administration's Small Business Development Center Program.
Full	July 21, 1983	Open hearing on Small Business Administration's Program Delivery.
Entrepreneurship and Special Problems Facing Small Business Subcommittee.	Aug. 22, 1983	Open hearing on Special Problems Facing Small Business in the Midwest. (Eau Claire, Wisconsin).
Small Business: Family Farm Subcommittee	Sept. 9, 1983	Open hearing on the Impact of Canadian Agricultural Imports. (Syracuse, New York).
Export Promotion and Market Development Subcommittee.	Sept. 12, 1983	Open hearing on Export-Import Bank Financing for Small Business. (St. Paul, Minnesota).
Full	Oct. 12, 1983	Open hearing on the Impact of Crime on Small Business. (Buffalo, New York).
Full	Oct. 17, 1983	Open hearing on Impact of Interest Rates on the Small Business and Agricultural Sectors. (Sioux Falls, South Dakota).
Full	Oct. 17, 1983	Open hearing on Obstacles faced by Small Business in Federal Procurement. (Nashville, Tennessee).
Full	Nov. 3, 1983	Open hearing to Examine the Competitive Situation Existing between Public Utilities and Certain Small Business Owners.
Government Regulation and Paperwork Subcommittee.	Nov. 15, 1983	Open hearing on Oversight of Paperwork Reduction Act of 1980.
Full	Dec. 7, 1983	Open hearing on Obstacles Facing Small Business Participation in the Federal Procurement Process. (Chicago, Illinois).
Full	Dec. 19, 1983	Open hearing on Federal Contracting Opportunities for Minority and Women Owned Businesses: An Examination of the 8(d) Subcontracting Program. (Tacoma, Washington).
Full	Dec. 21, 1983	Open hearing on Federal Contracting Opportunities for Minority and Women Owned Businesses: An Examination of the 8(d) Subcontracting Program. (Pasco, Washington).
Full	Jan. 17, 1984	Open hearing on Obstacles Facing Small Business Participation in the Federal Procurement Process. (Oklahoma City, Ok.).
Full	Feb. 7, 1984	Open hearing on Antitrust Enforcement and Its Impact on Small Business.
Innovation and Technology Subcommittee	Mar. 1, 1984	Open hearing on Implementation of the Small Business Innovation Development Act (P.L. 97-219).
Full	Mar. 6, 1984	Open hearing on S. 2375, A bill to amend the Small Business Act to improve the operation of the Secondary Market for Loans Guaranteed by the Small Business Administration.
Full	Mar. 7, 1984	Open hearing on S. 1920, Small Business Computer Crime Prevention Act.
Full	Mar. 29, 1984	Open hearing on S. 2487, A bill to provide for a White House Conference on Small Business.
Small Business: Family Farm Subcommittee	Apr. 5, 1984	Open hearing on the Impact of Natural Gas Prices on Farmers and Small Businessmen.

Full	Apr. 6, 1984	Open hearing on S. 2489, the "Small Business Competition Enhancement Act of 1984", and S. 2434, a bill to amend section 15 of the Small Business Act by requiring the assignment of Breakout Procurement Center Representatives.
Full	Apr. 12, 1984	Open hearing on S. 2489, the "Small Business Competition Enhancement Act of 1984" and S. 2434, a bill to amend section 15 of the Small Business Act by requiring the assignment of Breakout Procurement Center Representatives.
Full	May 1, 1984	Open hearing on S. 2069, A bill to amend the Small Business Act in order to permit the SBA to approve combined 7(a) regular business loans and 502/503 development company loans which exceed $500,000.
Export Promotion and Market Development Subcommittee.	May 10, 1984	Open hearing on the Financing of Small Business Exports by the Export-Import Bank.
Full	May 17, 1984	Open hearing on S. 2084, to amend the Small Business Act to Allow the Small Business Administration to make loans to small business concerns whose primary business is the communication of ideas.
Full	May 30, 1984	Open hearing on Women Entrepreneurs: Their Success and Problems (Eugene, Oregon).
Full	June 6, 1984	Open hearing on the Impact of Government Competition on Small Business.
Small Business: Family Farm Subcommittee	Aug. 1, 1984	Open hearing To Examine the Issue of Corporate Buy Outs of Family Farms.
Entrepreneurship and Special Problems Facing Small Business Subcommittee.	Aug. 28, 1984	Open hearing to Examine How the Environmental Quality of the Great Lakes Impacts Small Business in the Region.

APPENDIX D

Publications of the Committee on Small Business, 98th Congress

HEARINGS

Feb. 2, 1983 — S. 272, A Bill to Improve Small Business Access to Federal Procurement Information, and S. 273, The Minority Small Business Pilot Procurement Act of 1983.

Feb. 8, 1983 — Oversight of the Small Business Administration's Small Business Development Center Program.

Feb. 11, 1983 — Obstacles to Exporting Faced by Small Businesses.

Feb. 17, 1983 — S. 499, A Bill to Require the Usage of Tax-Exempt Financing in Connection with the Small Business Administration's Section 503 Loan Program.

Mar. 16, 1983 — Public Law 97-219, The Small Business Innovation Development Act.

Mar. 24, 1983 — Federal Minority Business Development Program.

Mar. 29, 1983 — Disaster Loan Program. (Clinton, Ark.)

Apr. 5, 1983 — Umbrella Contracting and Its Impact on Small Business.

Apr. 7 1983 — Export-Import Bank Financing For Small Businesses.

Apr. 13, 1983 — S. 742, 743, 744, and 745, Bills to Amend the Small Business Act and the Small Business Investment Act of 1958.

Apr. 13, 1983 — Nomination of Mary F. Wieseman to be Inspector General of the Small Business Administration.

Apr. 27, 1983 — Critical Issues Facing Family Farm Owners. Workshop on Farm Credit Policy.

May 11, 1983 — S. 1022, A Bill to make Small Businesses Owned by American Indian Tribes Eligible for the SBA 8(a) Program.

June 8, 1983 — S. 628, Legislation Dealing with Farmers' Eligibility in the SBA Disaster Program.

June 9, 1983 — Impact of the Payment-in-Kind Program on Agricultural Support Industries.

June 29, and Sept. 9, 1983 — Impact of Canadian Agricultural Imports and Its Effect on the Small Business Community. (Washington, D.C., and Syracuse, N.Y.)

July 6, 1983 — Small Business Development Center Progam (Part I) (Seattle, Wash).

July 13, 1983 — Various Small Business Capital Formation Proposals and their Job Creation Potential.

July 19, 1983 — S. 1429, Legislation to Extend and Strengthen the Small Business Administration's Small Business Development Center Program.

July 21, 1983 — Small Business Administration's Program Delivery.

Aug. 22, 1983 — Special Problems Facing Small Business in the Midwest. (Eau Claire, Wis.)

Sept. 12, 1983 — Export-Import Bank Financing for Small Business. (St. Paul, Minn.)

Oct. 12, 1983 — Impact of Crime on Small Business. (Buffalo, N.Y.)

Oct. 17, 1983 — Impact of Interest Rates on the Small Business and Agricultural Sectors.

Nov. 3, 1983 — Impact of Public Utility Competition on Small Business Contractors.

Nov. 15, 1983 — Paperwork Reduction Act of 1980.

Dec. 19 and 21, 1983 — Federal contracting opportunities for minority and women-owned businesses: An examination of the 8(d) sub-contracting program. (Tacoma and Pasco, Wash.)

Oct. 17, Dec. 7, 1983 and Jan. 17, 1984 — Obstacles faced by Small Business in Federal Procurement. (Nashville, Tenn.; Chicago, Ill.; and Oklahoma City, Okla.)

Feb. 7, 1984 — Federal Antitrust Enforcement and Its Impact on Small Business.

Mar. 1, 1984 — Small Business Innovation Development Act, Public Law 97-219.

Mar. 6, 1984 — S. 2375, A bill to amend the Small Business Act to improve the operation of the secondary market for loans guaranteed by the Small Business Administration.

Mar. 7, 1984 — S. 1920, Small Business Computer Crime Prevention Act.

Mar. 29, 1984 — S. 2487, A bill to Provide for a White House Conference on Small Business.

Apr. 5, 1984 — Impact of Natural Gas Prices on Farmers and Small Businessmen.

May 1, 1984 — S. 2069, A bill to amend the Small Business Act in order to permit the SBA to approve combined 7(a) regular business loans and 502/503 Development Company Loans which exceed $500,000.

May 10, 1984 — Financing of Small Business Exports by the Export-Import Bank.

May 17, 1984 — S. 2084, A bill to amend the Small Business Act to allow the Small Business Administration to make loans to small business concerns whose primary business is the communication of ideas.

May 30, 1984 — Women Entrepreneurs: Their Success and Problems. (Eugene, Oregon).

June 6, 1984 — Impact of Government Competition on Small Business.

REPORTS ON BILLS

S.Rept. 98-14 — **Mar. 1, 1983**

Authorizing Expenditures by Committees of the Senate. (To accompany S.Res. 76.)

S.Rept. 98-22 — **Mar. 11, 1983**

Amending section 503 of the Small Business Investment Act of 1958. (To accompany S. 499.)

S.Rept. 98-129 — **May 18, 1983**

Amending the Small Business Act and the Small Business Investment Act of 1958. (To accompany S. 1323.)

S.Rept. 98-262 — **Oct. 4, 1983**

Amending section 8(a) of the Small Business Act. (To accompany S. 1022.)

S.Rept. 98-309 — **Nov. 11, 1983**

Amending the Small Business Act to provide for the Continuation of the Small Business Development Center Program. (To accompany S. 1429.)

S.Rept. 98-380 — **Mar. 28, 1984**

A bill to provide for a White House Conference on Small Business. (To accompany S. 2487).

S.Rept. 98-438 — **May 10, 1984**

Small Business Computer Security and Education Act of 1984. (To accompany H.R. 3075).

S.Rept. 98-452 — **May 16, 1984**

A bill to amend the Small Business Act. (To accompany S. 2069).

S.Rept. 98-523 — **June 14, 1984**

Small Business Competition Enhancement Act of 1984. (To accompany S. 2489).

S.Rept. 98-542 — **June 28, 1984**

Small Business Secondary Market Improvements Act of 1984. (To accompany S. 2375).

APPENDIX E

BILLS AND RESOLUTIONS ENACTED INTO LAW

S. 273 — **Jan. 27, 1983**

A bill to amend section 8(a)(1) of the Small Business Act.

July 13, 1983 — Signed by the President. P.L. 98-47.

S. 272 — **Jan. 27, 1983**

A bill to improve small business access to Federal procurement information.

Aug. 11, 1983 — Signed by the President. P.L. 98-72.

H.R. 4013 — **Sept. 28, 1983**

A bill to extend the Small Business Development Center program administered by the SBA until January 1, 1985.

Nov. 29, 1983 — Signed by the President. P.L. 98-177.

H.R. 4169 — **Oct. 20, 1983**

A bill to provide for reconciliation pursuant to section 3 of the First Concurrent Resolution on the Budget for fiscal year 1984.

Apr. 18, 1984 — Signed by the President. P.L. 98-270.

H.R. 5298 — **Mar. 29, 1984**

A bill to provide for a White House Conference on Small Business.

May 8, 1984 — Signed by the President. P.L. 98-276.

S. 2375 — **Feb. 29, 1984**

A bill to amend the Small Business Act to improve the operation of the secondary market for loans guarenteed by the Small Business Administration.

July 10, 1984 — Signed by the President. P.L. 98-352.

H.R. 3075 — **May 19, 1983**

A bill to amend the Small Business Act to establish a Small Business Computer Crime and Security Task Force.

July 16, 1984 — Signed by the President. P.L. 98-362.

S. 1429 — **Jun. 8, 1983**

A bill to amend the Small Business Development Center Act of 1980.

Aug. 21, 1984 — Signed by the President. P.L. 98-395.

H.R. 4209 — **Oct. 25, 1983**

A bill to amend section 15 of the Small Business Act with respect to establishing procurement center representatives in each major DoD procurement center.

Oct. 30, 1984 — Signed by the President. P.L. 98-577.

Public Law 98-525
98th Congress

An Act

Oct. 19, 1984
[H.R. 5167]

To authorize appropriations for military functions of the Department of Defense and to prescribe military personnel levels for the Department of Defense for fiscal year 1985, to revise and improve defense procurement, compensation, and management programs, to establish new defense educational assistance programs, to authorize appropriations for national security programs of the Department of Energy, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Department of Defense Authorization Act, 1985.

SHORT TITLE; TABLE OF CONTENTS

SECTION 1. (a) This Act may be cited as the "Department of Defense Authorization Act, 1985".

TITLE XII—PROCUREMENT POLICY REFORM AND OTHER PROCUREMENT MATTERS

PART A—SHORT TITLE AND CONGRESSIONAL FINDINGS

Sec. 1201. Short title.
Sec. 1202. Congressional findings and policy.

PART B—AMENDMENTS TO CHAPTER 137 OF TITLE 10, UNITED STATES CODE

Sec. 1211. Definition.
Sec. 1212. Publication of proposed regulations.
Sec. 1213. Planning for procurement of supplies and for future competition.
Sec. 1214. Delegation of certain procurement functions.
Sec. 1215. Personnel evaluations to include emphasis on competition and cost savings.
Sec. 1216. Improved procurement procedures.
Sec. 1217. Clerical amendments.

PART C—AMENDMENTS TO CHAPTER 141 OF TITLE 10, UNITED STATES CODE

Sec. 1231. Identification of sources of supplies.
Sec. 1232. Revision of long-term lease or charter authority.
Sec. 1233. Economic order quantities.
Sec. 1234. Additional miscellaneous procurement provisions.
Sec. 1235. Clerical amendments.

PART D—OTHER PROCUREMENT PROVISIONS

Sec. 1241. Cooperative agreements for procurement technical assistance.
Sec. 1242. Revision of requirements for selected acquisition reports and unit cost reports.
Sec. 1243. Duration of assignment of program managers for major programs.
Sec. 1244. Authority to waive compliance with certain requirements provided for in regulations relating to prices of spare parts and replacement equipment.
Sec. 1245. Regulations for allocating overhead to parts to which the prime contractor has added little value.

PART E—TEMPORARY PROVISIONS, REPORTS, AND EFFECTIVE DATES

Sec. 1251. Report on implementation of certain recommendations of the Grace Commission.
Sec. 1252. Plans for management of technical data and computer capability improvements.
Sec. 1253. Report on use of independent cost estimates for major defense acquisition programs.
Sec. 1254. One-year extension of test program to authorize price differentials to relieve economic dislocations.

Defense Procurement Reform Act of 1984.

TITLE XII—PROCUREMENT POLICY REFORM AND OTHER PROCUREMENT MATTERS

PART A—SHORT TITLE AND CONGRESSIONAL FINDINGS

SHORT TITLE

10 USC 2301 note.

SEC. 1201. This title may be cited as the "Defense Procurement Reform Act of 1984".

CONGRESSIONAL FINDINGS AND POLICY

Contracts. 10 USC 2301 note.

SEC. 1202. The Congress finds that recent disclosures of excessive payments by the Department of Defense for replenishment parts have undermined confidence by the public and Congress in the defense procurement system. The Secretary of Defense should make every effort to reform procurement practices relating to replenishment parts. Such efforts should, among other matters, be directed to the elimination of excessive pricing of replenishment spare parts and the recovery of unjustified payments. Specifically, the Secretary should—

(1) direct that officials in the Department of Defense refuse to enter into contracts unless the proposed prices are fair and reasonable;

(2) continue and accelerate ongoing efforts to improve defense contracting procedures in order to encourage effective competition and assure fair and reasonable prices;

(3) direct that replenishment parts be acquired in economic order quantities and on a multiyear basis whenever feasible, practicable, and cost effective;

(4) direct that standard or commercial parts be used whenever such use is technically acceptable and cost effective;

(5) vigorously continue reexamination of policies relating to acquisition, pricing, and management of replenishment parts and of technical data related to such parts; and

(6) ensure that persons that have developed products or processes offered or to be offered for sale to the public are not required, as a condition for the procurement of such products or processes by the Department of Defense, to provide to the United States technical data relating to the design, development, or manufacture of such products or processes (except for such data as may be necessary for the United States to operate and maintain the product or use the process if obtained by the United States as an element of performance under the contract).

PART B—AMENDMENTS TO CHAPTER 137 OF TITLE 10, UNITED STATES CODE

DEFINITIONS

SEC. 1211. Section 2302 of title 10, United States Code, is amended by adding at the end thereof the following new paragraphs:

"(4) 'Technical data' means recorded information (regardless of the form or method of the recording) of a scientific or technical nature (including computer software documentation) relating to supplies procured by an agency. Such term does not include computer software or financial, administrative, cost or pricing, or management data or other information incidental to contract administration.

"(5) 'Major system' means a combination of elements that will function together to produce the capabilities required to fulfill a mission need. The elements may include hardware, equipment, software or any combination thereof, but excludes construction or other improvements to real property. A system shall be considered a major system if (A) the Department of Defense is responsible for the system and the total expenditures for research, development, test, and evaluation for the system are estimated to be more than $75,000,000 (based on fiscal year 1980 constant dollars) or the eventual total expenditure for procurement of more than $300,000,000 (based on fiscal year 1980 constant dollars); (B) a civilian agency is responsible for the system and total expenditures for the system are estimated to exceed $750,000 (based on fiscal year 1980 constant dollars) or the dollar threshold for a 'major system' established by the agency pursuant to Office of Management and Budget (OMB) Circular A-109, entitled 'Major Systems Acquisitions', whichever is greater; or (C) the system is designated a 'major system' by the head of the agency responsible for the system.".

PUBLICATION OF PROPOSED REGULATIONS

SEC. 1212. (a) Chapter 137 of title 10, United States Code, is amended by inserting after section 2303 the following new section:

Effective date. Federal Register, publication. *Post*, p. 3077. 10 USC 2303a.

"§ 2303a. Publication of proposed regulations

"(a) Except as provided in subsection (d), a procurement policy, regulation, procedure, or form (including amendments or modification thereto) that (1) has a significant effect beyond the internal operating procedures of the agency issuing the procurement policy, regulation, procedure, or form, or (2) has a significant cost or administrative impact on contractors or offerors may not take effect until 30 days after the procurement policy, regulation, procedure, or form is published for public comment in the Federal Register pursuant to subsection (b).

"(b) Subject to subsection (c), the head of the agency shall cause to be published in the Federal Register a notice of the proposed procurement policy, regulation, procedure, or form and provide for a public comment period for receiving and considering the views of all interested parties on such proposal. The length of such comment period may not be less than 30 days.

"(c) Any notice of a proposed procurement policy, regulation, procedure, or form prepared for publication in the Federal Register shall include—

"(1) in a format required for publication in the Federal Register, the text of the proposal or, if it is impracticable to publish the full text of the proposal, a summary of the proposal and a statement specifying the name and address of the officer or employee of the executive agency from whom the full text may be obtained; and

"(2) a request for interested parties to submit comments on the proposal and shall include the name and address of the officer or employee of the Government designated to receive such comments.

"(d)(1) The requirements of subsections (a) and (b) may be waived by the officer of the agency authorized to issue a procurement policy, regulation, procedure, or form if circumstances make compliance with such requirements impracticable.

"(2) A procurement policy, regulation, procedure, or form with respect to which the requirements of subsections (a) and (b) are waived under paragraph (1) shall be effective on a temporary basis if—

"(A) a notice of such procurement policy, regulation, procedure, or form is published in the Federal Register and includes a statement that the procurement policy, regulation, procedure, or form is temporary; and

"(B) provision is made for a public comment period of 30 days beginning on the date on which the notice is published.

After considering the comments received, the head of the agency waiving the requirements of subsections (a) and (b) under paragraph (1) may issue the final procurement policy, regulation, procedure, or form.".

Effective date. 10 USC 2303a note.

(b) The amendment made by subsection (a) shall take effect with respect to procurement policies, regulations, procedures, or forms first proposed to be issued by an agency on or after the date which is 30 days after the date of enactment of this Act.

PLANNING FOR PROCUREMENT OF SUPPLIES AND FOR FUTURE COMPETITION

SEC. 1213. (a) Section 2305 of title 10, United States Code, is amended by adding at the end thereof the following new subsections: Contracts.

"(c) The Secretary of Defense shall ensure that before a contract for the delivery of supplies to the Department of Defense is entered into—

"(1) when the appropriate officials of the Department are making an assessment of the most advantageous source for acquisition of the supplies (considering quality, price, delivery, and other factors), there is a review of the availability and cost of each item of supply—

"(A) through the supply system of the Department of Defense; and

"(B) under standard Government supply contracts, if the item is in a category of supplies defined under regulations of the Secretary of Defense as being potentially available under a standard Government supply contract; and

"(2) there is a review of both the procurement history of the item and a description of the item, including, when necessary for an adequate description of the item, a picture, drawing, diagram, or other graphic representation of the item.

"(d)(1)(A) The Secretary of Defense shall ensure that, in preparing a solicitation for the award of a development contract for a major system, the head of an agency consider requiring in the solicitation that an offeror include in its offer proposals described in subparagraph (B). In determining whether to require such proposals, the head of the agency shall give due consideration to the purposes for which the system is being procured and the technology necessary to meet the system's required capabilities. If such proposals are required, the head of the agency shall consider them in evaluating the offeror's price.

"(B) The proposals that the head of an agency is to consider requiring in a solicitation for the award of a development contract are the following:

"(i) Proposals to incorporate in the design of the major system items which are currently available within the supply system of the Federal agency responsible for the major system, available elsewhere in the national supply system, or commercially available from more than one source.

"(ii) With respect to items that are likely to be required in substantial quantities during the system's service life, proposals to incorporate in the design of the major system items which the United States will be able to acquire competitively in the future.

"(2)(A) The Secretary of Defense shall ensure that, in preparing a solicitation for the award of a production contract for a major system, the head of an agency consider requiring in the solicitation that an offeror include in its offer proposals described in subparagraph (B). In determining whether to require such proposals, the head of the agency shall give due consideration to the purposes for which the system is being procured and the technology necessary to meet the system's required capabilities. If such proposals are required, the head of the agency shall consider them in evaluating the offeror's price.

"(B) The proposals that the head of an agency is to consider requiring in a solicitation for the award of a production contract are proposals identifying opportunities to ensure that the United States will be able to obtain on a competitive basis items procured in connection with the system that are likely to be reprocured in substantial quantities during the service life of the system. Proposals submitted in response to such requirement may include the following:

"(i) Proposals to provide to the United States the right to use technical data to be provided under the contract for competitive reprocurement of the item, together with the cost to the United States, if any, of acquiring such technical data and the right to use such data.

"(ii) Proposals for the qualification or development of multiple sources of supply for the item.

"(3) If the head of an agency is making a noncompetitive award of a development contract or a production contract for a major system, the factors specified in paragraphs (1) and (2) to be considered in evaluating an offer for a contract may be considered as objectives in negotiating the contract to be awarded.".

Effective date. 10 USC 2305 note.

(b) The amendment made by subsection (a) shall take effect at the end of the 180-day period beginning on the date of the enactment of this Act.

DELEGATION OF CERTAIN PROCUREMENT FUNCTIONS

Contracts. *Ante*, p. 1194.

SEC. 1214. Section 2311 of title 10, United States Code, is amended—

(1) by inserting "(a)" before "Except as provided in"; and

(2) by adding at the end thereof the following new subsection:

"(b)(1) The head of a procuring activity of an agency named in section 2303 of this title may delegate (subject to his direction) to any general or flag officer, to any civilian officer or employee serving in a position in grade GS-16 or above under the General Schedule (or in a comparable or higher position under another schedule), or to the head of a contracting office any authority of the head of the procuring activity to enter into a contract (or to approve the authority to enter into a contract) that is a sole-source contract or that results from an unsolicited proposal.

5 USC 5332.

"(2) Any report required to be submitted by the head of an agency to Congress concerning contracts (or negotiations for contracts) above a certain dollar threshold that are sole-source contracts or that result from unsolicited proposals and that are entered into without the approval of certain officials of the procuring activity concerned need not specify a contract or negotiation above the stated amount if the head of the procuring activity, his deputy, or a person to whom authority was delegated under paragraph (1) approved the authority to enter into the contract.".

PERSONNEL EVALUATIONS TO INCLUDE EMPHASIS ON COMPETITION AND COST SAVINGS

SEC. 1215. Chapter 137 of title 10, United States Code, is amended by adding at the end thereof the following new section:

"§ 2317. Encouragement of competition and cost savings 10 USC 2317.

"The Secretary of Defense shall establish procedures to ensure that personnel appraisal systems of the Department of Defense give appropriate recognition to efforts to increase competition and achieve cost savings in areas relating to contracts covered by this chapter.".

IMPROVED PROCUREMENT PROCEDURES

SEC. 1216. (a) Chapter 137 of title 10, United States Code, is amended by adding after section 2317 (as added by section 1215 of this Act) the following new sections:

"§ 2318. Advocates for competition 10 USC 2318.

"(a)(1) In addition to the advocates for competition established or designated pursuant to section 20(a) of the Office of Federal Procurement Policy Act, the Secretary of Defense shall designate an officer or employee of the Defense Logistics Agency to serve as the advocate for competition of the agency. *Ante*, p. 1195.

"(2) The advocate for competition of the Defense Logistics Agency shall carry out the responsibilities and functions provided for in sections 20(b) and 20(c) of the Office of Federal Procurement Policy Act.

"(b) Each advocate for competition of an agency named in section 2303(a) of this title shall be a general or flag officer if a member of the armed forces or a grade GS–16 or above under the General Schedule (or in a comparable or higher position under another schedule), if a civilian employee and shall be designated to serve for a minimum of two years. 5 USC 5332.

"(c) Each advocate for competition of an agency of the Department of Defense shall transmit to the Secretary of Defense a report describing his activities during the preceding year. The report of each advocate for competition shall be included in the annual report of the Secretary of Defense required by section 21 of the Office of Federal Procurement Policy Act, in the form in which it was submitted to the Secretary. Report. *Ante*, p. 1195.

"§ 2319. Encouragement of new competitors Contracts. 10 USC 2319.

"(a) In this section, 'qualification requirement' means a requirement for testing or other quality assurance demonstration that must be completed by an offeror before award of a contract.

"(b) Except as provided in subsection (c), the head of the agency shall, before establishing a qualification requirement—

"(1) prepare a written justification stating the necessity for establishing the qualification requirement and specify why the qualification requirement must be demonstrated before contract award;

"(2) specify in writing and make available to a potential offeror upon request all requirements which a prospective offeror, or its product, must satisfy in order to become qualified, such requirements to be limited to those least restrictive to meet the purposes necessitating the establishment of the qualification requirement;

"(3) specify an estimate of the costs of testing and evaluation likely to be incurred by a potential offeror in order to become qualified;

"(4) ensure that a potential offeror is provided, upon request and on a reimbursable basis, a prompt opportunity to demonstrate its ability to meet the standards specified for qualification

using qualified personnel and facilities of the agency concerned or of another agency obtained through interagency agreement, or under contract, or other methods approved by the agency (including use of approved testing and evaluation services not provided under contract to the agency);

"(5) if testing and evaluation services are provided under contract to the agency for the purposes of clause (4), provide to the extent possible that such services be provided by a contractor who is not expected to benefit from an absence of additional qualified sources and who shall be required in such contract to adhere to any restriction on technical data asserted by the potential offeror seeking qualification; and

"(6) ensure that a potential offeror seeking qualification is promptly informed as to whether qualification is attained and, in the event qualification is not attained, is promptly furnished specific information why qualification was not attained.

"(c)(1) Subsection (b) of this section does not apply with respect to a qualification requirement established by statute or administrative action before the date of the enactment of the Defense Procurement Reform Act of 1984 unless such requirement is a qualified products list.

Ante, p. 2588.

Waiver.

"(2)(A) Except as provided in subparagraph (B), if it is unreasonable to specify the standards for qualification which a prospective offeror or its product must satisfy, a determination to that effect shall be submitted to the advocate for competition of the procuring activity responsible for the purchase of the item subject to the qualification requirement. After considering any comments of the advocate for competition reviewing such determination, the head of the purchasing office may waive the requirements of clauses (2) through (6) of subsection (b) for up to two years with respect to the item subject to the qualification requirement.

"(B) The waiver authority provided in this paragraph does not apply with respect to a qualified products list.

"(3) A potential offeror may not be denied the opportunity to submit and have considered an offer for a contract solely because the potential offeror (A) is not on a qualified bidders list, qualified manufacturers list, or qualified products list, or (B) has not been identified as meeting a qualification requirement established after the date of the enactment of the Defense Procurement Reform Act of 1984 if the potential offeror can demonstrate to the satisfaction of the contracting officer that the potential offeror or its product meets the standards established for qualification or can meet such standards before the date specified for award of the contract.

"(4) Nothing contained in this subsection requires the referral of an offer to the Small Business Administration pursuant to section 8(b)(7) of the Small Business Act if the basis for the referral is a challenge by the offeror to either the validity of the qualification requirement or the offeror's compliance with such requirement.

15 USC 637.

"(5) The head of an agency need not delay a proposed procurement in order to comply with subsection (b) or in order to provide a potential offeror with an opportunity to demonstrate its ability to meet the standards specified for qualification.

"(6) The requirements of subsection (b) also apply before enforcement of any qualified products list, qualified manufacturers list, or qualified bidders list.

"(d)(1) If the number of qualified sources or qualified products available to compete actively for an anticipated future requirement is fewer than two actual manufacturers or the products of two actual manufacturers, respectively, the head of the agency concerned shall—

"(A) periodically publish notice in the Commerce Business Daily soliciting additional sources or products to seek qualification, unless the contracting officer determines that such publication would compromise national security; and

"(B) bear the cost of conducting the specified testing and evaluation (excluding the costs associated with producing the item or establishing the production, quality control, or other system to be tested and evaluated) for a small business concern or a product manufactured by a small business concern which has met the standards specified for qualification and which could reasonably be expected to compete for a contract for that requirement, but such costs may be borne only if the head of the agency determines that such additional qualified sources or products are likely to result in cost savings from increased competition for future requirements sufficient to amortize the costs incurred by the agency within a reasonable period of time considering the duration and dollar value of anticipated future requirements.

"(2) The head of an agency shall require a prospective contractor requesting the United States to bear testing and evaluation costs under paragraph (1)(B) to certify as to its status as a small business concern under section 3 of the Small Business Act. 15 USC 632

"(e) Within seven years after the establishment of a qualification requirement under subsection (b) or within seven years following an agency's enforcement of a qualified products list, qualified manufacturers list, or qualified bidders list, any such qualification requirement shall be examined and revalidated in accordance with the requirements of subsection (b). The preceding sentence does not apply in the case of a qualification requirement for which a waiver is in effect under subsection (c)(2).

"(f) Except in an emergency as determined by the head of the agency, whenever the head of the agency determines not to enforce a qualification requirement for a solicitation, the agency may not thereafter enforce that qualification requirement unless the agency complies with the requirements of subsection (b).

"§ 2320. Rights in technical data

Contracts. Regulations. 10 USC 2320.

"(a) The legitimate proprietary interest of the United States and of a contractor in technical or other data shall be defined in regulations prescribed as part of the single system of Government-wide procurement regulations as defined in section 4(4) of the Office of Federal Procurement Policy Act. Such regulations may not impair any right of the United States or of any contractor with respect to patents or copyrights or any other right in technical data otherwise established by law. The following factors shall be considered in prescribing such regulations:

Ante, p. 1195. Patents and trademarks. Copyrights.

"(1) Whether the technical data was developed—

"(A) exclusively with Federal funds;

"(B) exclusively at private expense; or

"(C) in part with Federal funds and in part at private expense.

"(2) The statement of congressional policy and objectives in section 200 of title 35, the statement of purposes in section 2(b) of the Small Business Innovation Development Act of 1982 (Public Law 97-219; 15 U.S.C. 638 note), and the declaration of policy in section 2 of the Small Business Act (15 U.S.C. 631).

35 USC 200.

"(3) The interest of the United States in increasing competition and lowering costs by developing and locating alternative sources of supply and manufacture.

"(4) The policy set forth in section 1202(6) of the Defense Procurement Reform Act of 1984.

Ante, p. 2588.

"(b) Regulations prescribed under subsection (a) shall require that, whenever practicable, a contract for supplies or services entered into by an agency named in section 2303 of this title contain appropriate provisions relating to technical data, including provisions—

10 USC 2303.

"(1) defining the respective rights of the United States and the contractor or subcontractor (at any tier) regarding any technical data to be delivered under the contract;

"(2) specifying the technical data, if any, to be delivered under the contract and delivery schedules for such delivery;

"(3) establishing or referencing procedures for determining the acceptability of technical data to be delivered under the contract;

"(4) establishing separate contract line items for the technical data, if any, to be delivered under the contract;

"(5) to the maximum practicable extent, identifying, in advance of delivery, technical data which is to be delivered with restrictions on the right of the United States to use such data;

"(6) requiring the contractor to revise any technical data delivered under the contract to reflect engineering design changes made during the performance of the contract and affecting the form, fit, and function of the items specified in the contract and to deliver such revised technical data to an agency within a time specified in the contract;

"(7) requiring the contractor to furnish written assurance at the time the technical data is delivered or is made available that the technical data is complete and accurate and satisfies the requirements of the contract concerning technical data;

"(8) establishing remedies to be available to the United States when technical data required to be delivered or made available under the contract is found to be incomplete or inadequate or to not satisfy the requirements of the contract concerning technical data; and

"(9) authorizing the head of the agency to withhold payments under the contract (or exercise such other remedies as the head of the agency considers appropriate) during any period if the contractor does not meet the requirements of the contract pertaining to the delivery of technical data.

Ante, p. 2591.

"(c) Nothing in this section or in section 2305(d) of this title prohibits the Secretary of Defense from prescribing standards for determining whether a contract entered into by the Department of Defense shall provide for a time to be specified in the contract after which the United States shall have the right to use (or have used) for any purpose of the United States all technical data required to be delivered to the United States under the contract or providing for such a period of time (not to exceed 7 years) as a negotiation objective.

"(d) The Secretary of Defense shall by regulation establish programs which provide domestic business concerns an opportunity to purchase or borrow replenishment parts from the United States for the purpose of design replication or modification, to be used by such concerns in the submission of subsequent offers to sell the same or like parts to the United States. Nothing in this subsection limits the authority of the head of an agency to impose restrictions on such a program related to national security considerations, inventory needs of the United States, the improbability of future purchases of the same or like parts, or any additional restriction otherwise required by law. Business and industry.

"§ 2321. Validation of proprietary data restrictions Contracts. 10 USC 2321.

"(a) A contract for supplies or services entered into by the Department of Defense which provides for the delivery of technical data shall provide that—

"(1) a contractor or subcontractor at any tier shall be prepared to furnish to the contracting officer a written justification for any restriction asserted by the contractor or subcontractor on the right of the United States to use such technical data; and

"(2) the contracting officer may review the validity of any restriction asserted by the contractor or by a subcontractor under the contract on the right of the United States to use technical data furnished to the United States under the contract if the contracting officer determines that reasonable grounds exist to question the current validity of the asserted restriction and that the continued adherence to the asserted restriction by the United States would make it impracticable to procure the item competitively at a later time.

"(b) If after such review the contracting officer determines that a challenge to the asserted restriction is warranted, the contracting officer shall provide written notice to the contractor or subcontractor asserting the restriction. Such notice shall—

"(1) state the grounds for challenging the asserted restriction; and

"(2) require a response within 60 days justifying the current validity of the asserted restriction.

"(c) If a contractor or subcontractor asserting a restriction subject to this section submits to the contracting officer a written request, showing the need for additional time to comply with the requirement to justify the current validity of the asserted restriction, additional time to adequately permit the submission of such justification shall be provided by the contracting officer as appropriate. If a party asserting a restriction receives notices of challenges to restrictions on technical data from more than one contracting officer, and notifies each contracting officer of the existence of more than one challenge, the contracting officer initiating the first in time challenge, after consultation with the party asserting the restriction and the other contracting officers, shall formulate a schedule of responses to each of the challenges that will afford the party asserting the restriction with an equitable opportunity to respond to each such challenge.

"(d)(1) Upon a failure by the contractor or subcontractor to submit any response under subsection (b), the contracting officer shall issue a decision pertaining to the validity of the asserted restriction.

"(2) After review of any justification submitted in response to the notice provided pursuant to subsection (b), the contracting officer

shall, within 60 days of receipt of any justification submitted, issue a decision or notify the party asserting the restriction of the time within which a decision will be issued.

Claims.

"(e) If a claim pertaining to the validity of the asserted restriction is submitted in writing to a contracting officer by a contractor or subcontractor at any tier, such claim shall be considered a claim within the meaning of the Contract Disputes Act of 1978 (41 U.S.C. 601 et seq.).

"(f)(1) If, upon final disposition, the contracting officer's challenge to the restriction on the right of the United States to use such technical data is sustained—

"(A) the restriction on the right of the United States to use the technical data shall be cancelled; and

"(B) if the asserted restriction is found not to be substantially justified, the contractor or subcontractor, as appropriate, shall be liable to the United States for payment of the cost to the United States of reviewing the asserted restriction and the fees and other expenses (as defined in section 2412(d)(2)(A) of title 28) incurred by the United States in challenging the asserted restriction, unless special circumstances would make such payment unjust.

"(2) If, upon final disposition, the contracting officer's challenge to the restriction on the right of the United States to use such technical data is not sustained—

"(A) the United States shall continue to be bound by the restriction; and

"(B) the United States shall be liable for payment to the party asserting the restriction for fees and other expenses (as defined in section 2412(d)(2)(A) of title 28) incurred by the party asserting the restriction in defending the asserted restriction if the challenge by the United States is found not to be made in good faith.

10 USC 2322.

"§ 2322. Limitation on small business set-asides

"(a) The head of an agency may not authorize a procurement to be set-aside for participation only by small business concerns in the case of a procurement under the Foreign Military Sales Program, if the foreign purchaser specifies the sources qualified to meet the requirement and only one of those sources is a small business concern.

Expiration date.

"(b) This section expires two years after the effective date of this section.

10 USC 2323.

"§ 2323. Commercial pricing for supplies

"(a) Except in the case of an offer submitted with a written statement under subsection (b)(2) and except as provided in subsection (c), a contract entered into using other than competitive procedures by an agency named in section 2303(a) of this title for the purchase of items that are offered for sale to the public may not result in a price to the United States that exceeds the lowest price at which such items are sold by the contractor to the public.

"(b) A person who submits an offer to such an agency for the supply of items that it offers for sale to the public (1) shall certify in the offer that the price offered is not more than its lowest commercial price for the items, or (2) shall submit with the offer a written

statement specifying the amount of the difference between its lowest commercial price for the items and the price offered and providing a justification for that difference.

"(c) Subsections (a) and (b) do not apply to a contract if the contracting officer determines that the use of the price otherwise required by subsection (a) for such contract is not appropriate because of—

"(1) national security considerations; or

"(2) differences in quantities, quality, delivery, or other terms and conditions of the contract from commercial contract terms.".

(b) Within 60 days after the date the regulations required by section 2320(a) of title 10, United States Code (as added by subsection (a)), are prescribed, the Secretary of Defense, the Administrator of General Services, and the Administrator of the National Aeronautics and Space Administration shall submit to Congress a joint report describing in detail how those regulations give consideration to the factors specified for consideration in that subsection. *Ante*, p. 2593.

(c)(1) Section 2318 of title 10, United States Code (as added by subsection (a)), shall take effect on April 1, 1985. Effective dates. 10 USC 2318 note.

(2) Sections 2319, 2320, and 2321 of title 10, United States Code (as added by subsection (a)), shall apply with respect to solicitations issued after the end of the one-year period beginning on the date of the enactment of this Act. 10 USC 2319 note.

(3) Section 2322 of title 10, United States Code (as added by subsection (a)), shall take effect at the end of the 90-day period beginning on the date of the enactment of this Act. 10 USC 2322 note.

(4) Section 2323 of title 10, United States Code (as added by subsection (a)), shall take effect at the end of the 180-day period beginning on the date of the enactment of this Act. 10 USC 2323 note.

CLERICAL AMENDMENTS

SEC. 1217. The table of sections at the beginning of chapter 137 of title 10, United States Code, is amended—

(1) by inserting after the item relating to section 2303 the following new item:

"2303a. Publication of proposed regulations."; and

(2) by adding at the end thereof the following new items:

"2317. Encouragement of competition and cost savings.
"2318. Advocates for competition.
"2319. Encouragement of new competition.
"2320. Rights in technical data.
"2321. Validation of proprietary data restrictions.
"2322. Limitation on small business set-asides.
"2323. Commercial pricing for supplies.".

PART C—AMENDMENTS TO CHAPTER 141 OF TITLE 10, UNITED STATES CODE

IDENTIFICATION OF SOURCES OF SUPPLIES

SEC. 1231. (a) Section 2384 of title 10, United States Code, is amended to read as follows:

"§ 2384a. Supplies: economic order quantities 10 USC 2384a.

"(a)(1) An agency referred to in section 2303(a) of this title shall procure supplies in such quantity as (A) will result in the total cost and unit cost most advantageous to the United States, where practicable, and (B) does not exceed the quantity reasonably expected to be required by the agency.

"(2) The Secretary of Defense shall take paragraph (1) into account in approving rates of obligation of appropriations under section 2204 of this title.

"(b) Each solicitation for a contract for supplies shall, if practicable, include a provision inviting each offeror responding to the solicitation to state an opinion on whether the quantity of the supplies proposed to be procured is economically advantageous to the United States and, if applicable, to recommend a quantity or quantities which would be more economically advantageous to the United States. Each such recommendation shall include a quotation of the total price and the unit price for supplies procured in each recommended quantity.".

(b) The amendment made by subsection (a) shall take effect at the end of the 180-day period beginning on the date of the enactment of this Act. Effective date. 10 USC 2384a note.

ADDITIONAL MISCELLANEOUS PROCUREMENT PROVISIONS

SEC. 1234. (a) Chapter 141 of title 10, United States Code, as amended by section 1005, is amended by adding at the end thereof the following new sections:

"§ 2402. Prohibition of contractors limiting subcontractor sales directly to the United States 10 USC 2402.

"(a) Each contract for the purchase of supplies or services made by the Department of Defense shall provide that the contractor will not—

"(1) enter into any agreement with a subcontractor under the contract that has the effect of unreasonably restricting sales by the subcontractor directly to the United States of any item or process (including computer software) made or furnished by the subcontractor under the contract (or any follow-on production contract); or

"(2) otherwise act to restrict unreasonably the ability of a subcontractor to make sales to the United States described in clause (1).

"(b) This section does not prohibit a contractor from asserting rights it otherwise has under law.

"§ 2403. Major weapon systems: contractor guarantees 10 USC 2403.

"(a) In this section:

"(1) 'Weapon system' means items that can be used directly by the armed forces to carry out combat missions and that cost more than $100,000 or for which the eventual total procurement cost is more than $10,000,000. Such term does not include commercial items sold in substantial quantities to the general public.

"(2) 'Prime contractor' means a party that enters into an agreement directly with the United States to furnish part or all of a weapon system.

"(3) 'Design and manufacturing requirements' means structural and engineering plans and manufacturing particulars, including precise measurements, tolerances, materials, and finished product tests for the weapon system being produced.

"(4) 'Essential performance requirements', with respect to a weapon system, means the operating capabilities or maintenance and reliability characteristics of the system that are determined by the Secretary of Defense to be necessary for the system to fulfill the military requirement for which the system is designed.

"(5) 'Component' means any constituent element of a weapon system.

"(6) 'Mature full-scale production' means the manufacture of all units of a weapon system after the manufacture of the first one-tenth of the eventual total production or the initial production quantity of such system, whichever is less.

"(7) 'Initial production quantity' means the number of units of a weapon system contracted for in the first year of full-scale production.

"(8) 'Head of an agency' has the meaning given that term in section 2302 of this title.

Ante, p. 2589.

"(b) Except as otherwise provided in this section, the head of an agency may not after January 1, 1985, enter into a contract for the production of a weapon system unless each prime contractor for the system provides the United States with written guarantees that—

"(1) the item provided under the contract will conform to the design and manufacturing requirements specifically delineated in the production contract (or in any amendment to that contract);

"(2) the item provided under the contract, at the time it is delivered to the United States, will be free from all defects in materials and workmanship;

"(3) the item provided under the contract will conform to the essential performance requirements of the item as specifically delineated in the production contract (or in any amendment to that contract); and

"(4) if the item provided under the contract fails to meet the guarantee specified in clause (1), (2), or (3), the contractor will at the election of the Secretary of Defense or as otherwise provided in the contract—

"(A) promptly take such corrective action as may be necessary to correct the failure at no additional cost to the United States; or

"(B) pay costs reasonably incurred by the United States in taking such corrective action.

Prohibition.

"(c) The head of the agency concerned may not require guarantees under subsection (b) from a prime contractor for a weapon system, or for a component of a weapon system, that is furnished by the United States to the contractor.

Waiver.

"(d) Subject to subsection (e)(1), the Secretary of Defense may waive part or all of subsection (b) in the case of a weapon system, or component of a weapon system, if the Secretary determines—

"(1) that the waiver is necessary in the interest of national defense; or

"(2) that a guarantee under that subsection would not be cost-effective.

The Secretary may not delegate authority under this subsection to any person who holds a position below the level of Assistant Secretary of Defense or Assistant Secretary of a military department. Prohibition.

"(e)(1) Before making a waiver under subsection (d) with respect to a weapon system that is a major defense acquisition program for the purpose of section 139a of this title, the Secretary of Defense shall notify the Committees on Armed Services and on Appropriations of the Senate and House of Representatives in writing of his intention to waive any or all of the requirements of subsection (b) with respect to that system and shall include in the notice an explanation of the reasons for the waiver. 10 USC 139a.

"(2) Not later than February 1 of each year, the Secretary of Defense shall submit to the committees specified in paragraph (1) a report identifying each waiver made under subsection (d) during the preceding calendar year for a weapon system that is not a major defense acquisition program for the purpose of section 139a of this title and shall include in the report an explanation of the reasons for the waivers. Report.

"(f) The requirement for a guarantee under subsection (b)(3) applies only in the case of a contract for a weapon system that is in mature full-scale production. However, nothing in this section prohibits the head of the agency concerned from negotiating a guarantee similar to the guarantee described in that subsection for a weapon system not yet in mature full-scale production. When a contract for a weapon system not yet in mature full-scale production is not to include the full guarantee described in subsection (b)(3), the Secretary shall comply with the notice requirements of subsection (e).

"(g) Nothing in this section prohibits the head of the agency concerned from—

"(1) negotiating the specific details of a guarantee, including reasonable exclusions, limitations and time duration, so long as the negotiated guarantee is consistent with the general requirements of this section;

"(2) requiring that components of a weapon system furnished by the United States to a contractor be properly installed so as not to invalidate any warranty or guarantee provided by the manufacturer of such component to the United States;

"(3) reducing the price of any contract for a weapon system or other defense equipment to take account of any payment due from a contractor pursuant to subclause (B) of subsection (b)(4);

"(4) in the case of a dual source procurement, exempting from the requirements of subsection (b)(3) an amount of production by the second source contractor equivalent to the first one-tenth of the eventual total production by the second source contractor; and

"(5) using written guarantees to a greater extent than required by this section, including guarantees that exceed those in clauses (1), (2), and (3) of subsection (b) and guarantees that provide more comprehensive remedies than the remedies specified under clause (4) of that subsection.

"(h)(1) The Secretary of Defense shall prescribe such regulations as may be necessary to carry out this section. Regulations.

"(2) This section does not apply to the Coast Guard or to the National Aeronautics and Space Administration.

10 USC 2404.

"§ 2404. Acquisition of petroleum: authority to waive contract procedures

"(a) The Secretary of Defense may, for any purchase of petroleum, waive the application of any provision of law prescribing procedures to be followed in the formation of contracts, prescribing terms and conditions to be included in contracts, or regulating the performance of contracts if the Secretary determines—

"(1) that petroleum market conditions have adversely affected (or will in the near future adversely affect) the acquisition of petroleum by the Department of Defense; and

"(2) the waiver will expedite or facilitate the acquisition of petroleum for Government needs.

"(b) A waiver under subsection (a) may be made with respect to a particular contract or with respect to classes of contracts. Such a waiver that is applicable to a contract for the purchase of petroleum may also be made applicable to a subcontract under that contract.

"(c) The Secretary of Defense may acquire petroleum by exchange of petroleum or petroleum derivatives.

"(d) The Secretary of Defense shall notify the Congress within 10 days of the date on which any waiver is made under this section and of the reasons for the necessity of exercising such waiver.

"(e) In this section, 'petroleum' means natural or synthetic crude, blends of natural or synthetic crude, and products refined or derived from natural or synthetic crude or from such blends.

10 USC 2405.

"§ 2405. Limitation on adjustment of shipbuilding contracts

"(a) The Secretary of a military department may not adjust any price under a shipbuilding contract entered into after December 7, 1983, for an amount set forth in a claim, request for equitable adjustment, or demand for payment under the contract (or incurred due to the preparation, submission, or adjudication of any such claim, request, or demand) arising out of events occurring more than 18 months before the submission of the claim, request, or demand.

"(b) For the purposes of subsection (a), a claim, request, or demand shall be considered to have been submitted only when the contractor has provided the certification required by section 6(c)(1) of the Contract Disputes Act of 1978 (41 U.S.C. 605(c)(1)) and the supporting data for the claim, request, or demand.".

Effective dates. Repeals. 10 USC 2304 note.

(b)(1) Effective on January 1, 1985, section 794 of the Department of Defense Appropriation Act, 1984 (Public Law 98-212; 97 Stat. 1454), is repealed.

10 USC 2304 note.

(2) Effective on the date of the enactment of this Act, section 787 of the Department of Defense Appropriation Act, 1984 (Public Law 98-212; 97 Stat. 1453), is repealed.

10 USC 2402 note.

(c) Section 2402 of title 10, United States Code (as added by subsection (a)), shall take effect at the end of the 180-day period beginning on the date of the enactment of this Act.

CLERICAL AMENDMENTS

SEC. 1235. The table of sections at the beginning of chapter 141 of title 10, United States Code, is amended—

(1) by striking out the item relating to section 2384 and inserting in lieu thereof the following:

"2384. Supplies: identification of supplier and sources.
"2384a. Supplies: economic order quantities."; and

(2) by adding at the end thereof the following new item:

"2402. Prohibition of contractors limiting subcontractor sales directly to the United States.
"2403. Major weapon systems: contractor guarantees.
"2404. Acquisition of petroleum: authority to waive contract procedures.
"2405. Limitation on adjustment of shipbuilding contracts.".

PART D—OTHER PROCUREMENT PROVISIONS

COOPERATIVE AGREEMENTS FOR PROCUREMENT TECHNICAL ASSISTANCE

SEC. 1241. (a)(1) Title 10, United States Code, is amended by inserting after chapter 141 the following new chapter:

"CHAPTER 142—PROCUREMENT TECHNICAL ASSISTANCE COOPERATIVE AGREEMENT PROGRAM

"Sec.
"2411. Definitions.
"2412. Purposes.
"2413. Cooperative agreements.
"2414. Limitation.
"2415. Distribution.
"2416. Regulations.

"§ 2411. Definitions

10 USC 2411.

"In this chapter:

"(1) 'Eligible entity' means a State (as defined in section 6302(5) of title 31), a local government (as defined in section 6302(2) of that title), or a private, nonprofit organization that enters into a cooperative agreement with the Secretary under this chapter to furnish procurement technical assistance to business entities and to defray at least one-half of the costs of furnishing such assistance.

"(2) 'Secretary' means the Secretary of Defense acting through the Director of the Defense Logistics Agency.

"§ 2412. Purposes

10 USC 2412.

"The purposes of the program authorized by this chapter are—

"(1) to increase Department of Defense assistance for eligible entities furnishing procurement technical assistance to business entities; and

"(2) to assist eligible entities in the payment of the costs of establishing and carrying out new procurement technical assistance programs and maintaining existing procurement technical assistance programs.

"§ 2413. Cooperative agreements

10 USC 2413.

"(a) The Secretary may, in accordance with the provisions of this chapter, enter into cooperative agreements with eligible entities to carry out the purposes of this chapter.

"(b) In entering into cooperative agreements under subsection (a), the Secretary shall assure that at least one procurement technical assistance program is carried out in each Department of Defense contract administration services region during each fiscal year.

10 USC 2414.

"§ 2414. Limitation

"The value of the assistance furnished by the Department of Defense to any eligible entity to carry out a procurement technical assistance program pursuant to a cooperative agreement under this chapter during any fiscal year may not exceed $150,000.

10 USC 2415.

"§ 2415. Distribution

"(a)(1) During a fiscal year specified in paragraph (2), the Secretary shall reserve the applicable percentage prescribed in paragraph (2), out of funds appropriated to carry out this chapter in such fiscal year, for the purpose of furnishing assistance pursuant to cooperative agreements entered into under section 2413 of this title with eligible entities which have carried out a procurement technical assistance program before such fiscal year. The Secretary may use the remainder of such funds during such fiscal year for the purpose of furnishing assistance pursuant to cooperative agreements entered into under such section with eligible entities which have not carried out a procurement technical assistance program before such fiscal year.

Ante, p. 2605.

"(2) For the purposes of paragraph (1), the applicable percentage during fiscal year 1985 is 50 percent and during fiscal year 1986 is 75 percent.

"(b) During any fiscal year after fiscal year 1986, the Secretary shall allocate assistance under this chapter in accordance with such cooperative agreements as the Secretary enters into pursuant to section 2413 of this title.

10 USC 2416.

"§ 2416. Regulations

"The Secretary of Defense shall prescribe regulations to carry out this chapter.".

(2) The table of chapters at the beginning of subtitle A of such title and at the beginning of part IV of such subtitle are each amended by inserting after the item relating to chapter 141 the following new item:

"142. Procurement Technical Assistance Cooperative Agreement Program ..... 2411".

Appropriation authorizations.

(b)(1) There are authorized to be appropriated $2,000,000 for fiscal year 1985 to be available for the purpose of furnishing assistance to carry out procurement technical assistance programs pursuant to cooperative agreements under chapter 142 of title 10, United States Code (as added by subsection (a)).

Ante, p. 2605.

(2) There are authorized to be appropriated for fiscal year 1985 such additional sums as are necessary to defray the expenses of administering the provisions of such chapter during such fiscal year, including the expenses related to the employment of any additional personnel necessary to administer such provisions.

REVISION OF REQUIREMENTS FOR SELECTED ACQUISITION REPORTS AND UNIT COST REPORTS

SEC. 1242. (a) Section 139a of title 10, United States Code, is amended—

(1) in subsection (a)(3)—

(A) by striking out "procurement funds appropriated" and inserting in lieu thereof "funds programed to be available for obligation for procurement"; and

(B) by striking out "of funds appropriated" and inserting in lieu thereof "of funds programed to be available for obligation";

(2) by inserting "and that is in excess of $2,000,000" after "dollar amount" in subsection (a)(4);

(3) in subsection (b)(2), by striking out "there has been no" and all that follows and inserting in lieu thereof "during the period since that report there has been—

"(A) less than a 5 percent change in total program cost; and

"(B) less than a three-month delay in any program schedule milestone shown in the Selected Acquisition Report.";

(4) in subsection (f)—

(A) by striking out "30" the first place it appears and inserting in lieu thereof "60";

(B) by striking out "30" the second place it appears and inserting in lieu thereof "45"; and

(C) by striking out the second sentence and inserting in lieu thereof the following: "A preliminary report shall be submitted for each annual Selected Acquisition Report within 30 days of the date on which the President submits the Budget to Congress."; and Report.

(5) by adding at the end thereof the following new subsection:

"(g) The requirements of this section with respect to a major defense acquisition program shall cease to apply after 90 percent of the items to be delivered to the United States under the program (shown as the total quantity of items to be purchased under the program in the most recent Selected Acquisition Report) have been delivered or 90 percent of planned expenditures under the program have been made.". Expiration date

(b)(1) Subsection (a) of section 139b of title 10, United States Code, is amended by adding at the end thereof the following new paragraph: Reports.

"(4) 'Baseline Report', with respect to a unit cost report that is submitted under this section to the Secretary concerned on a major defense acquisition program, means—

"(A) the most recent unit cost report submitted under subsection (e)(2)(B)(ii) with respect to the program, if that report was submitted for the second, third, or fourth quarter of the preceding fiscal year;

"(B) if no report was submitted under subsection (e)(2)(B)(ii) with respect to the program during that three-quarter period, the most recent unit cost report submitted under subsection (e)(1) with respect to the program, if that report was submitted during that three-quarter period; and

"(C) if no report was submitted with respect to the program under subsection (e)(1) or (e)(2)(B)(ii) during that three-quarter period, the baseline Selected Acquisition Report.".

(2) Subsection (b) of such section is amended—

(A) by striking out "not more than 7 days";

(B) by inserting after the first sentence the following new sentence: "Each report for the first quarter of a fiscal year shall be submitted not more than 7 days after the date on which the President transmits the Budget to Congress for the following fiscal year, and each report for other quarters shall be submitted not more than 7 days after the end of that quarter."; and

(C) by striking out "baseline Selected Acquisition Report" in paragraph (3) and inserting in lieu thereof "Baseline Report".

(3) Clauses (A) and (B) of subsection (c)(1) of such section are amended by striking out "baseline Selected Acquisition Report" and inserting in lieu thereof "Baseline Report".

(4)(A) Paragraphs (1) and (2) of subsection (d) of such section are amended by striking out "baseline Selected Acquisition Report" and inserting in lieu thereof "Baseline Report".

(B) Paragraph (3)(B) of such subsection is amended—

(i) by striking out "additional funds may not be obligated in connection with such program" and inserting in lieu thereof "funds appropriated for military construction, for research, development, test, and evaluation, and for procurement may not be obligated for a major contract under the program"; and

(ii) by striking out "but less than 25 percent" in subclause (i).

(5) Subsection (e) of such section is amended—

(A) in paragraph (1)—

(i) by striking out "subsection (d)(3)(B)" and inserting in lieu thereof "subsection (d)(3)(B)(i)"; and

(ii) by inserting "more than" before "15 percent";

(B) in paragraph (2)—

(i) by striking out "subsection (d)(3)(B)" and inserting in lieu thereof "subsection (d)(3)(B)(ii)";

(ii) by inserting "more than" before "25 percent";

(iii) by inserting in clause (A) "and the Secretary concerned submits to Congress, before the end of the 30-day period referred to in subsection (d)(3)(B)(i), a report containing the information described in subsection (g)" after "acquisition program"; and

(iv) by striking out "such subsection" in clause (B) and inserting in lieu thereof "subsection (d)(3)(B)(ii)"; and

(C) by striking out "in the case of" in paragraph (3) and all that follows and inserting in lieu thereof "at the end of a period of 30 days of continuous session of Congress (as determined under section 7307(b)(2) of this title) beginning on the date—

"(A) on which Congress receives the report of the Secretary concerned under paragraph (1) or (2)(B)(ii) with respect to that program, in the case of a determination of a more than 15 percent increase (as determined in subsection (d)); or

"(B) on which Congress has received both the report of the Secretary concerned under paragraph (1) or (2)(B)(ii) and the certification of the Secretary of Defense under paragraph (2)(B)(i) with respect to that program, in the case of a more than 25 percent increase (as determined under subsection (d)).".

(6) Subsection (g)(1) of such section is amended—

(A) by striking out clause (I) and inserting in lieu thereof the following:

"(I) The type of the Baseline Report (under subsection (a)(4)) and the date of the Baseline Report."; and

(B) in clause (K), by inserting "and the procurement unit cost for the succeeding fiscal year expressed in constant base-year dollars and in current year dollars" after "current dollars".

DURATION OF ASSIGNMENT OF PROGRAM MANAGERS FOR MAJOR PROGRAMS

SEC. 1243. (a) The tour of duty of an officer of the Armed Forces assigned after the date of the enactment of this Act as a program manager of a major defense acquisition program (as defined in section 139a(a) of title 10, United States Code) shall be (1) not less than four years, or (2) until completion of a major program milestone (as defined in regulations prescribed by the Secretary of Defense). 10 USC 139a note.

(b) The Secretary of the military department concerned may waive the length of the tour of duty prescribed in subsection (a). Such authority may not be delegated. Waiver. Prohibition

AUTHORITY TO WAIVE COMPLIANCE WITH CERTAIN REQUIREMENTS PROVIDED FOR IN REGULATIONS RELATING TO PRICES OF SPARE PARTS AND REPLACEMENT EQUIPMENT

SEC. 1244. Section 1215(b) of the Department of Defense Authorization Act, 1984 (Public Law 98-94; 10 U.S.C. 2452 note), is amended—

(1) by inserting "(1)" after "(b)"; and

(2) by adding at the end thereof the following new paragraph:

"(2) The Secretary may provide in such regulations for the waiver of the prohibition in subsection (a)(1) and compliance with the requirements of subsection (a)(2) in the case of a purchase of any spare part or replacement equipment made or to be made through competitive procedures.".

REGULATIONS FOR ALLOCATING OVERHEAD TO PARTS TO WHICH THE PRIME CONTRACTOR HAS ADDED LITTLE VALUE

SEC. 1245. Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall prescribe by regulation the manner in which the Department of Defense negotiates prices for supplies to be obtained through the use of procedures other than competitive procedures, as defined in section 4(6) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(6)). Such revision shall specify the incurred overhead a contractor may appropriately allocate to such supplies and shall require the contractor to identify those supplies which it did not manufacture or to which it did not contribute significant value. Nothing in this section requires the submission of cost or pricing data not otherwise required by law. *Ante*, p. 1195.

PART E—TEMPORARY PROVISIONS, REPORTS, AND EFFECTIVE DATES

REPORT ON IMPLEMENTATION OF CERTAIN RECOMMENDATIONS OF THE GRACE COMMISSION

SEC. 1251. Not later than March 31, 1985, the Secretary of Defense shall submit to Congress a report assessing the recommendations of the President's Private Sector Survey on Cost Control (commonly referred to as the "Grace Commission") concerning—

(1) the system of making progress payments to defense contractors to offset high interest rates and inflation; and

(2) modernization of automated data processing systems in order to achieve more effective control of Department of Defense supply inventories.

PLANS FOR MANAGEMENT OF TECHNICAL DATA AND COMPUTER CAPABILITY IMPROVEMENTS

10 USC 139 note.

SEC. 1252. (a)(1) Not later than one year after the date of the enactment of this Act, the Secretary of Defense shall develop a plan for an improved system for the management of technical data relating to any major system of the Department of Defense. At a minimum, the management plan shall address procedures for—

(A) indexing, storing, and updating items of technical data in a system;

(B) developing, to the maximum extent practicable, a centralized system to identify the repository within the department responsible for technical data relating to an item and the extent of the data on file in that repository with respect to that item; and

(C) assuring that those parties otherwise entitled to receive technical data will have timely access to complete and current technical data.

(2) Not later than 5 years after the date of the enactment of this Act, the Secretary shall complete implementation of the management plan required to be developed by paragraph (1).

Report

(3) Not later than 18 months after the date of the enactment of this Act, the Comptroller General of the United States shall transmit to Congress a report evaluating the plan developed by the Secretary of Defense under paragraph (1).

(b) Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall transmit to the Committees on Armed Services of the Senate and House of Representatives a plan to improve substantially the computer capability of each of the military departments and of the Defense Logistics Agency to store and access rapidly data that is needed for the efficient procurement of supplies. The plan shall provide for a computer data base that includes price and procurement history, item identification, sources of supply, and other relevant information. The plan shall specify a schedule for the implementation of the improvements, the projected cost of implementation of the improvements, and such other recommendations as the Secretary of Defense considers appropriate to accomplish the improvements.

REPORT ON USE OF INDEPENDENT COST ESTIMATES FOR MAJOR DEFENSE ACQUISITION PROGRAMS

SEC. 1253. Not later than May 1, 1985, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives a report on the continued use of independent cost estimates in the planning, programing, budgeting, and selection process for major defense acquisition programs in the Department of Defense. Such report shall be a follow-on to the report required by section 1203(c) of the Department of Defense Authorization Act, 1984 (Public Law 98-94; 10 U.S.C. 1039 note), and shall include an overall assessment of the extent to which such estimates were adopted by the Department of Defense in making decisions on the fiscal year 1986 budget and a general explanation of why such estimates might have been modified or rejected. The Secretary shall also include in the report a statement as to whether adequate personnel and financial resources have been allocated at all levels of the Department of Defense to those organizations or

97 Stat. 683.
10 USC 139c note.

offices charged with developing or assessing independent estimates of the costs of major defense acquisition programs.

ONE-YEAR EXTENSION OF TEST PROGRAM TO AUTHORIZE PRICE DIFFERENTIALS TO RELIEVE ECONOMIC DISLOCATIONS

SEC. 1254. (a) Effective on October 1, 1984, section 1109 of the Department of Defense Authorization Act, 1983 (10 U.S.C. 2392 note), is amended— Effective dates. 97 Stat. 683.

(1) by striking out "fiscal years 1983 and 1984" each place it appears and inserting in lieu thereof "fiscal years 1983, 1984, and 1985"; and

(2) by striking out "and April 15, 1984," in the first sentence of subsection (b) and inserting in lieu thereof ", April 15, 1984, and April 15, 1985".

(b) Effective as of October 1, 1982, such section is amended by striking out "section 2892" and inserting in lieu thereof "section 2392".

Approved October 19, 1984.

LEGISLATIVE HISTORY—H.R. 5167 (S. 2723):

HOUSE REPORTS: No. 98-691 (Comm. on Armed Services) and No. 98-1080 (Comm. of Conference).
SENATE REPORT No. 98-500 accompanying S. 2723 (Comm. on Armed Services).
CONGRESSIONAL RECORD, Vol. 130 (1984):
May 15-17, 23, 24, 30, 31, considered and passed House.
June 7, 8, 11-15, 18-20, S. 2723 considered in Senate; H.R. 5167, amended, passed in lieu.
Sept. 26, House agreed to conference report.
Sept. 27, Senate agreed to conference report.
WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 20, No. 42 (1984):
Oct. 19, Presidential statement.

Public Law 98-72
98th Congress

An Act

To improve small business access to Federal procurement information.

Aug. 11, 1983
[S. 272]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 8(e) of the Small Business Act is amended to read as follows:

Small Business Act, amendment. 15 USC 637.

"(e)(1) It shall be the duty of the Secretary of Commerce, and the Secretary is hereby empowered, to obtain notice of all proposed competitive and noncompetitive civilian and defense procurement actions of $10,000 and above from any Federal department, establishment or agency (hereinafter in this subsection referred to as 'department') engaged in procurement of property, supplies, and services in the United States; and to publicize such notices in the daily publication Commerce Business Daily, immediately after the necessity for the procurement is established: *Provided,* That nothing in this paragraph shall require publication of such notices with respect to those procurements in which it is determined on a case-by-case basis that (A) the procurement for security reasons is of a classified nature; (B) the Federal department's need for the property, supplies, or services is of such unusual and compelling urgency that the Government would be seriously injured if the time periods provided for in paragraph (2) were complied with; (C) a foreign government reimburses the Federal department for the cost of the procurement of the property, supplies, or services for such government and only one source is available, or the terms of an international agreement or treaty between the United States and a foreign government authorize or require that all such procurement shall be from sources specified within such international agreement or treaty; (D) the procurement is made from another Government department or agency, or a mandatory source of supply; (E) the procurement is for utility services and only one source is available; (F) the procurement is made against an order placed under a requirement or similar contract, including orders for perishable subsistence supplies; (G) the procurement results from acceptance of a proposal pursuant to the Small Business Innovation Development Act of 1982 or an unsolicited proposal that demonstrates a unique or innovative research concept and publication of such unsolicited proposal would improperly disclose the originality of thought or innovativeness of the proposed research; or (H) it is determined in writing by the head of the Federal department, with the concurrence of the Administrator, that advance notice is not appropriate or reasonable.

Proposed procurement action notices, publication.

15 USC 631 note.

"(2) Whenever a Federal department is required to publish notice of procurement actions pursuant to paragraph (1) of this subsection, such department shall not—

Procurement actions by Federal departments, notice requirements.

"(A) issue a solicitation until at least fifteen days have elapsed from the date of publication of a proper notice of the action in the Commerce Business Daily, except if the solicitation is for procurement of requirements categorized as research or

development effort, in which case until at least thirty days have elapsed from the date of such publication;

"(B) foreclosure competition until at least thirty days have elapsed from either (i) the date of issuance of the solicitation, or (ii) in the case of orders under a basic agreement, basic ordering agreement, or similar arrangement, the date of publication of a proper notice of intent to place the order; or

"(C) commence negotiations for the award of a sole source contract until at least thirty days have elapsed from the date of publication of a proper notice of intent to contract: *Provided,* That nothing in this subparagraph shall prohibit an officer or employee of a Federal department from responding to a request for information.

Notice format.

"(3) Whenever notice is required by paragraph (1), such notice shall include—

"(A) a clear description of the property, supplies, or services to be contracted for, which description is not unnecessarily restrictive of competition;

"(B) the name, address and telephone number of the officer or employee of the Federal department who may be contacted for the purpose of obtaining a copy of either the solicitation or, if the notice is for an intent to contract on a sole source basis, such specification and information as practicable regarding the service or performance to be awarded; and

"(C) solely with respect to notice of intent to contract on a sole source basis, a statement that interested persons are invited to identify their interest and capability to respond to such requirement, or to submit proposals in response to such notice, within the stated period of time provided under paragraph (2).

"(4) Notwithstanding any other provision of law, unless the negotiations would be conducted pursuant to this section or section 9 of this Act or unless a Federal department's need for the property, supplies, or services is of such unusual and compelling urgency that the Government would be seriously injured if the provisions of this paragraph were complied with, a Federal department may not commence negotiations for the award of a sole source contract or a contract that results from an unsolicited proposal for more than $1,000,000 in fiscal year 1984, for more than $500,000 in fiscal year 1985 and for more than $300,000 in fiscal year 1986 and each year thereafter unless—

15 USC 638.

"(A) the head of the procuring activity or his deputy, on a nondelegable basis, has approved the authority to enter into such contract, and

"(B) the contracting officer for such contract has evaluated the responses to the notice of procurement action required in subparagraph (3)(C):

Provided, That nothing in this subparagraph shall prohibit an officer or employee of a Federal department from responding to a request for information. Annually, each department shall report to the Congress on each negotiation above the stated amount if the head of the procuring activity or his deputy did not approve the authority to enter into such contract.

Report to Congress.

"(5) In the case of all procurement actions in excess of $25,000 in which the award of a contract is likely to result in the award of subcontracts under such contract, unless the procurement for security reasons is of a classified nature, the Federal department shall

APPENDIX H

Public Law 98-177
98th Congress

An Act

To extend the Small Business Development Center program administered by the Small Business Administration until January 1, 1985.

Nov. 29, 1983
[H.R. 4013]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 204 of Public Law 96-302 (94 Stat. 848) is amended by striking "October 1, 1984" and by inserting "January 1, 1985".

Small Business Development Center Program, extension.
15 USC 648 note.

Approved November 29, 1983.

LEGISLATIVE HISTORY—H.R. 4013 (S. 1429):

HOUSE REPORT No. 98-406 (Comm. on Small Business).
CONGRESSIONAL RECORD, Vol. 129 (1983):
Oct. 18, considered and passed House.
Nov. 17, considered and passed Senate.

Public Law 98-270
98th Congress

An Act

To provide for reconciliation pursuant to section 3 of the First Concurrent Resolution on the Budget for the fiscal year 1984.

Apr. 18, 1984
[H.R. 4169]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Omnibus Budget Reconciliation Act of 1983.

TITLE I—SHORT TITLE AND DECLARATION OF PURPOSE

SHORT TITLE

SEC. 101. This Act may be cited as the "Omnibus Budget Reconciliation Act of 1983".

PURPOSE

SEC. 102. It is the purpose of this Act to implement the recommendations which were made by specified committees of the House of Representatives pursuant to directions contained in section 3 of the First Concurrent Resolution on the Budget for the fiscal year 1984 (H. Con. Res. 91, 98th Congress), and pursuant to the reconciliation requirements which were set forth by such concurrent resolution as provided in section 310 of the Congressional Budget Act of 1974. 2 USC 641.

TITLE II—COMMITTEE ON POST OFFICE AND CIVIL SERVICE

COST-OF-LIVING ADJUSTMENTS UNDER THE CIVIL SERVICE RETIREMENT SYSTEM

SEC. 201. (a) Subsections (a) and (b) of section 8340 of title 5, United States Code, are amended to read as follows:

"(a) For the purpose of this section—

"(1) the term 'base quarter', as used with respect to a year, means the calendar quarter ending on September 30, of such year; and

"(2) the price index for a base quarter is the arithmetical mean of such index for the 3 months comprising such quarter.

"(b) Except as provided in subsection (c) of this section, effective December 1 of each year, each annuity payable from the Fund having a commencing date not later than such December 1 shall be increased by the percent change in the price index for the base quarter of such year over the price index for the base quarter of the preceding year in which an adjustment under this subsection was made, adjusted to the nearest $\frac{1}{10}$ of 1 percent.".

(b)(1) The amendments made by subsection (a) shall take effect on the date of the enactment of this Act, except that no adjustment under section 8340(b) of title 5, United States Code (as amended by such subsection), shall be made during the period beginning on the date of the enactment of this Act and ending November 30, 1984.

Effective date.
5 USC 8340 note.

(2)(A) For purposes of the first adjustment under section 8340(b) of title 5, United States Code (as amended by subsection (a)), the base

quarter ending September 30, 1983, shall be considered to have been a base quarter in which an adjustment under such section (as so amended) was made.

(B) As used in subparagraph (A), the term "base quarter" has the meaning given such term by section 8340(a)(1) of title 5, United States Code (as amended by subsection (a)).

(c)(1) Section 301(a)(3) of the Omnibus Budget Reconciliation Act of 1982 is amended by striking out "(as determined by the Office of Personnel Management on the basis of the calendar year ending in such year)" and inserting in lieu thereof "(as determined by the Office of Personnel Management under section 8340(b) of title 5, United States Code)".

5 USC 8340 note.

(2) Section 301(b) of the Omnibus Budget Reconciliation Act of 1982 is hereby repealed.

5 USC 8340 note.

PAY ADJUSTMENT FOR FEDERAL EMPLOYEES

SEC. 202. (a)(1) Notwithstanding any other provision of law, in the case of fiscal year 1984, the overall percentage of the adjustment under section 5305 of title 5, United States Code, in the rates of pay under the General Schedule, and in the rates of pay under the other statutory pay systems, shall be an increase of 4 percent.

5 USC 5305 note.

5 USC 5332.

(2) Each increase in a pay rate or schedule which takes effect pursuant to paragraph (1) shall, to the maximum extent practicable, be of the same percentage, and shall take effect as of the first day of the first applicable pay period commencing on or after January 1 of such fiscal year.

(b)(1) Notwithstanding any other provision of law, in the case of a prevailing rate employee described in section 5342(a)(2) of title 5, United States Code, or an employee covered by section 5348 of such title—

5 USC 5343 note.

(A) any increase in the rate of pay payable to such employee which would result from the expiration of the limitation contained in section 107(a) of Public Law 97-377 (96 Stat. 1909) shall not take effect; and

5 USC 5343 note.

5 USC 5341.

(B) any adjustment under subchapter IV of chapter 53 of such title to any wage schedule or rate applicable to such employee which results from a wage survey and which is to become effective during the fiscal year beginning October 1, 1983, shall not exceed the amount which is 4 percent above the schedule or rate payable on September 30, 1983 (determined with regard to the limitation contained in section 107(a) of Public Law 97-377), and shall not be effective with respect to any pay period commencing before January 1 of such fiscal year.

(2) Notwithstanding the provisions of section 9(b) of Public Law 92-392 or section 704(b) of the Civil Service Reform Act of 1978, the provisions of paragraph (1) shall apply (in such manner as the Office of Personnel Management shall prescribe) to prevailing rate employees to whom such section 9(b) applies, except that the provisions of paragraph (1) shall not apply to any increase in a wage schedule or rate which is required by the terms of a contract entered into before the date of the enactment of this Act.

5 USC 5343 notes.

(3) The provisions of paragraph (1) shall not apply with respect to wage adjustments for prevailing rate supervisors under the supervisory pay plan published in the Federal Register on May 21, 1982 (47 Fed. Reg. 22100).

TITLE III—COMMITTEE ON SMALL BUSINESS

SEC. 301. Section 7(c) of the Small Business Act is amended by adding the following: Disaster assistance. Loans. 15 USC 636.

"(5) Notwithstanding the provisions of any other law, the interest rate on the Federal share of any loan made under subsection (b)(1) and (b)(2) on account of a disaster commencing on or after October 1, 1982, shall be—

"(A) in the case of a homeowner unable to secure credit elsewhere, the rate prescribed by the Administration but not more than one-half the rate determined by the Secretary of the Treasury taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loan plus an additional charge of not to exceed 1 per centum per annum as determined by the Administrator, and adjusted to the nearest one-eighth of 1 per centum, but not to exceed 4 per centum per annum;

"(B) in the case of a homeowner able to secure credit elsewhere, the rate prescribed by the Administration but not more than the rate determined by the Secretary of the Treasury taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loans plus an additional charge of not to exceed 1 per centum per annum as determined by the Administrator, and adjusted to the nearest one-eighth of 1 per centum, but not to exceed 8 per centum per annum;

"(C) in the case of a business concern unable to obtain credit elsewhere, not to exceed 4 per centum per annum;

"(D) in the case of a business concern able to obtain credit elsewhere, the rate prescribed by the Administration but not in excess of the lowest of (i) the rate prevailing in the private market for similar loans, (ii) the rate prescribed by the Administration as the maximum interest rate for deferred participation (guaranteed) loans under section 7(a) of this Act, or (iii) 8 per centum per annum. Loans under this subparagraph shall be limited to a maximum term of three years.

"(6) Notwithstanding the provisions of any other law, such loans, subject to the reductions required by subparagraphs (A) and (B) of paragraph 7(b)(1), shall be in amounts equal to 100 per centum of loss. The interest rates for loans made under paragraphs 7(b) (1) and (2), as determined pursuant to paragraph (5), shall be the rate of interest which is in effect on the date of the disaster commenced: *Provided,* That no loan under paragraphs 7(b) (1) and (2) shall be made, either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred (guaranteed) basis, if the total amount outstanding and committed to the borrower under subsection 7(b) would exceed $500,000 for each disaster unless an applicant constitutes a major source of employment in an area suffering a disaster, in which case the Administration, in its discretion, may waive the $500,000 limitation: *Provided further,* That the Administration, subject to the 15 USC 636.

15 USC 636.

reductions required by subparagraphs (A) and (B) of paragraph 7(b)(1), shall not reduce the amount of eligibility for any homeowner on account of loss of real estate to less than $100,000 for each disaster nor for any homeowner or lessee on account of loss of personal property to less than $20,000 for each disaster, such sums being in addition to any eligible refinancing.

With respect to any loan which is outstanding on the date of enactment of this paragraph and which was made on account of a disaster commencing on or after October 1, 1982, the Administrator shall make such change in the interest rate on the balance of such loan as is required herein effective as of the date of enactment.".

15 USC 631 note.

SEC. 302. Section 20 of the Small Business Act is amended as follows:

(1) by striking all of paragraph (5) of subsection (q) after the word "Administration" and by inserting the following "is authorized to make $100,000,000 in direct loans and for the programs authorized by sections 7(b)(1) and 7(b)(2) of this Act, the Administration is authorized to make $500,000,000 in direct loans."; and

15 USC 636.

(2) by adding the following new subsection:

"(t) For each of fiscal years 1985 and 1986, for the programs authorized by sections 7(b)(1) and 7(b)(2) the Administration is authorized to make $500,000,000 in direct loans and for each of such years for the programs authorized by sections 7(b)(3) and 7(b)(4) the Administration also is authorized to make $100,000,000 in direct loans.".

15 USC 647.

SEC. 303. Section 18(a) of the Small Business Act is amended by striking "October 1, 1983" and by inserting "October 1, 1986".

15 USC 636.

SEC. 304. Section 7(b) of the Small Business Act is amended as follows:

(1) by striking out the period at the end of paragraph (2) and by inserting in lieu thereof a semicolon; and

Disaster assistance. Loans.

(2) by adding after paragraph (3) the following new paragraph:

"(4) To make such disaster loans (either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred basis) as the Administration may determine to be necessary to assist, or refinance all or part of the existing indebtedness (specifically including any direct loans under section 7(a) of this Act which were made to small businesses affected by currency fluctuations and exchange freezes), of any small business concern located in an area of economic dislocation that is the result of the drastic fluctuation in the value of the currency of a country contiguous to the United States and adjustments in the regulation of its monetary system if such concern is unable to obtain credit elsewhere. The Governor of a State may certify to the Administration (A) that small business concerns within the State have suffered substantial economic injury as a result of such economic dislocation, and (B) that such concerns are in need of financial assistance which is not available on reasonable terms. Such economic dislocations must be of such magnitude that without the benefit of disaster loans provided hereunder a significant number of otherwise financially sound small businesses in the impacted regions or business sectors would either become insolvent or be unable to return quickly to their former level of operation. No disaster loan made hereunder shall

exceed $100,000, nor shall the proceeds thereof be used to reduce the exposure of any other lender. The Administration may permit deferral of payment of principal and interest for one year on loans made hereunder.". Payment deferral.

SEC. 305. Section 20(q) of the Small Business Act is amended by striking from paragraph (5) "section 7(b)(3)" and inserting in lieu thereof "sections 7(b)(3) and 7(b)(4)". 15 USC 631 note.

SEC. 306. Paragraph (1) of section 4(c) of the Small Business Act is further amended by inserting "7(b)(4)," after "7(b)(3),". 15 USC 633

SEC. 307. The amendments made by sections 304 and 305 of this title shall apply to economic dislocations certified by any State Governor to the Small Business Administration after the date of enactment of this Act providing such dislocation commenced since January 1, 1982. 15 USC 636 note.

SEC. 308. Section 7(b)(3) of the Small Business Act is amended as follows: 15 USC 636.

(1) by inserting "continuation of," after "in effecting"; and

(2) by inserting the following at the end of such paragraph: "For the purposes of this paragraph, the impact of the 1983 Payment-in-Kind Land Diversion program, or any successor Payment-in-Kind program with a similar impact on the small business community, shall be deemed to be a consequence of Federal Government action; and".

SEC. 309. Section 7(c)(6) of the Small Business Act is further amended by adding the following at the end of the second proviso: "Employees of concerns sharing a common business premises shall be aggregated in determining 'major source of employment' status for nonprofit applicants owning such premises.". Employment and unemployment. *Ante*, p. 159.

SEC. 310. Section 3 of the Small Business Act is amended by adding the following new subsection at the end thereof: Agricultural cooperative. 15 USC 632. 15 USC 636.

"(j) For the purposes of section 7(b)(2) of this Act, the term 'small agricultural cooperative' means an association (corporate or otherwise) acting pursuant to the provisions of the Agricultural Marketing Act (12 U.S.C. 1141j), whose size does not exceed the size standard established by the Administration for other similar agricultural small business concerns. In determining such size, the Administration shall regard the association as an entity and shall not include the income or employees of any member shareholder of such cooperative: *Provided*, That such an association shall not be deemed to be a small agricultural cooperative unless each member of the board of directors of the association, or each member of the governing body of the association if it is not incorporated, also individually qualifies as a small business concern.".

SEC. 311. Section 7(b)(2) of the Small Business Act is amended as follows: 15 USC 636.

(1) by striking "small business concern" and inserting in lieu thereof "small business concern or small agricultural cooperative";

(2) by striking "small business concerns" and inserting in lieu thereof "small business concerns or small agricultural cooperatives"; and

(3) by striking "the concern" and inserting in lieu thereof "the concern or the cooperative".

SEC. 312. The amendments made by sections 310 and 311 of this title shall apply to loans granted on the basis of any disaster with respect to which a declaration has been issued after September 1, 1982, under section 7(b)(2) (A), (B), or (C) of the Small Business Act or 15 USC 632 note. 15 USC 636.

with respect to which a certification has been made after such date under section 7(b)(2)(D) of such Act.

15 USC 636. Effective date. 15 USC 632 note.

SEC. 313. This title shall take effect October 1, 1983.

TITLE IV—ADDITIONAL PROPOSAL FOR DEFICIT REDUCTION

FINDINGS

SEC. 401. The Congress finds and declares that—

(1) current projections indicate that the Federal Government's budget deficits will continue at unacceptably high levels for the foreseeable future;

(2) these high deficits can place upward pressure on interest rates, reduce investment, raise the trade deficit, decrease employment, and threaten the vitality of economic recovery; and

(3) reduction of these unacceptably high deficits requires a comprehensive plan to slow the growth of Federal spending, including military and entitlement spending, and to increase revenues.

DOMESTIC ECONOMIC SUMMIT CONFERENCE TO REDUCE THE BUDGET DEFICIT

SEC. 402. (a) The President shall convene a domestic economic summit conference to address the dangerous economic situation created by these projected large deficits.

(b) The summit conference shall consist of the President, the Speaker of the House of Representatives, the President pro tempore of the Senate, the majority leaders and minority leaders of the House of Representatives and Senate, and other appropriate participants from the Congress and the executive branch responsible for the development of economic policy.

Report.

(c) No later than forty-five days after the date of the enactment of this Act, this summit conference shall develop and report to Congress a comprehensive plan to reduce the projected deficits in the Budget of the United States.

Approved April 18, 1984.

LEGISLATIVE HISTORY—H.R. 4169 (S. 2062):

HOUSE REPORT No. 98-425 (Comm. on the Budget).
SENATE REPORT No. 98-300 accompanying S. 2062 (Comm. on the Budget).
CONGRESSIONAL RECORD:
Vol. 129 (1983): Oct. 25, considered and passed House.
Vol. 130 (1984): Apr. 5, considered and passed Senate.
WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 20, No. 16 (1984):
Apr. 18, Presidential statement.

Public Law 98-276
98th Congress

An Act

To provide for a White House Conference on Small Business.

May 8, 1984
[H.R. 5298]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "White House Conference on Small Business Authorization Act".

White House Conference on Small Business Authorization Act.
15 USC 631 note.

AUTHORIZATION OF CONFERENCE

SEC. 2. (a) The President shall call and conduct a National White House Conference on Small Business (hereinafter referred to as the "Conference") not earlier than January 1, 1985, and not later than September 1, 1986, to carry out the purposes described in section 3 of this Act. The Conference shall be preceded by State and regional conferences with at least one such conference being held in each State.

15 USC 631 note.

(b) Participants in the Conference and other interested individuals and organizations, are authorized to conduct conferences and other activities at the State and regional levels prior to the date of the Conference, subject to the approval of the Administrator of the Small Business Administration, and shall direct such conferences and activities toward the consideration of the purposes of the Conference described in section 3 of this Act in order to prepare for the National Conference.

State and local governments.

PURPOSE OF CONFERENCE

SEC. 3. The purpose of the Conference shall be to increase public awareness of the essential contribution of small business; to identify the problems of small business; to examine the status of minorities and women as small business owners; to assist small business in carrying out its role as the Nation's job creator; to assemble small businesses to develop such specific and comprehensive recommendations for executive and legislative action as may be appropriate for maintaining and encouraging the economic viability of small business and, thereby, the Nation; and to review the status of recommendations adopted at the 1980 White House Conference on Small Business.

Minorities.
Women.
15 USC 631 note.

CONFERENCE PARTICIPANTS

SEC. 4. (a) In order to carry out the purposes specified in section 3 of this Act, the Conference shall bring together individuals concerned with issues relating to small business: *Provided,* That no small business concern representative may be denied admission to any State or regional conference, nor may any fee or charge be imposed on any small business concern representative except an amount to cover the cost of any meal provided to such representative plus a registration fee of not to exceed $10.

15 USC 631 note.

(b) Delegates, including alternates, to the National Conference shall be elected by participants at the State and regional conferences: *Provided,* That each Governor and each chief executive official of the political subdivisions enumerated in section 4(a) of the Small Business Act may appoint one delegate and one alternate: *Provided further,* That each Member of the United States House of Representatives, including each Delegate, and each Member of the United States Senate may appoint one delegate and one alternate: *And provided further,* That the President may appoint one hundred delegates and alternates. Only individuals from small businesses shall be eligible for appointment pursuant to this subsection.

15 USC 633.

PLANNING AND ADMINISTRATION OF CONFERENCE

15 USC 631 note.

SEC. 5. (a) All Federal departments, agencies, and instrumentalities are authorized and directed to provide such support and assistance as may be necessary to facilitate the planning and administration of the Conference.

(b) In carrying out the provisions of this Act, the Administrator of the Small Business Administration—

(1) shall provide such assistance as may be necessary for the organization and conduct of conferences at the State and regional levels as authorized under section 2(b) of this Act; and

(2) is authorized to enter into contracts with public agencies, private organizations, and academic institutions to carry out the provisions of this Act.

(c) The Chief Counsel for Advocacy shall assist in carrying out the provisions of this Act by preparing and providing background materials for use by participants in the Conference, as well as by participants in State and regional conferences.

(d) Each participant in the Conference shall be responsible for his or her expenses related to attending the Conference and shall not be reimbursed either from funds appropriated pursuant to this Act or the Small Business Act.

15 USC 631 note.

(e)(1) The President is authorized to appoint and compensate an executive director and such other directors and personnel for the Conference as he may deem advisable, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates.

5 USC 5101 *et seq.*, 5331.

(2) Upon request by the executive director, the heads of the executive and military departments are authorized to detail employees to work with the executive director in planning and administering the Conference without regard to the provisions of section 3341 of title 5, United States Code.

REPORTS REQUIRED

15 USC 631 note.

SEC. 6. Not more than six months from the date on which the National Conference is convened, a final report of the Conference shall be submitted to the President and the Congress. The report shall include the findings and recommendations of the Conference as well as proposals for any legislative action necessary to implement the recommendations of the Conference. The final report of the Conference shall be available to the public.

Public availability.

FOLLOWUP ACTIONS

SEC. 7. The Small Business Administration shall report to the Congress annually during the three-year period following the submission of the final report of the Conference on the status and implementation of the findings and recommendations of the Conference. Report. 15 USC 631 note.

AVAILABILITY OF FUNDS

SEC. 8. (a) There are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act, and they shall remain available until expended. New spending authority or authority to enter contracts as provided in this Act shall be effective only to such extent and in such amounts as are provided in advance in appropriation Acts. 15 USC 631 note.

(b) No funds appropriated to the Small Business Administration shall be made available to carry out the provisions of this Act other than funds appropriated specifically for the purpose of conducting the Conference. Any funds remaining unexpended at the termination of the Conference, including submission of the report pursuant to section 6, shall be returned to the Treasury of the United States and credited as miscellaneous receipts.

SEC. 9. This Act shall become effective October 1, 1984. Effective date. 15 USC 631 note.

Approved May 8, 1984.

LEGISLATIVE HISTORY—H.R. 5298 (S. 2487):

HOUSE REPORT No. 98-652 (Comm. on Small Business).
SENATE REPORT No. 98-380 accompanying S. 2487 (Comm. on Small Business).
CONGRESSIONAL RECORD, Vol. 130 (1984):
Apr. 9, considered and passed House.
Apr. 11, considered and passed Senate.

Public Law 98-352
98th Congress

An Act

To amend the Small Business Act to improve the operation of the secondary market for loans guaranteed by the Small Business Administration.

July 10, 1984
[S. 2375]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Small Business Secondary Market Improvements Act of 1984.
15 USC 631 note.

SECTION 1. This Act may be cited as the "Small Business Secondary Market Improvements Act of 1984".

SEC. 2. Section 5 of the Small Business Act is amended by adding at the end thereof the following new subsections:

15 USC 634.
Regulations.

"(f)(1) The guaranteed portion of any loan made pursuant to this Act may be sold by the lender, and by any subsequent holder, consistent with regulations on such sales as the Administration shall establish, subject to the following limitations:

"(A) prior to the Administration's approval of the sale, or upon any subsequent resale, of any loan guaranteed by the Administration, if the lender certifies that such loan has been properly closed and that the lender has substantially complied with the provisions of the guarantee agreement and the regulations of the Administration, the Administration shall review and approve only materials not previously approved;

"(B) all fees due the Administration on a guaranteed loan shall have been paid in full prior to any sale; and

"(C) each loan shall have been fully disbursed to the borrower prior to any sale.

"(2) After a loan is sold in the secondary market, the lender shall remain obligated under its guarantee agreement with the Administration, and shall continue to service the loan in a manner consistent with the terms and conditions of such agreement.

"(3) The Administration shall develop such procedures as are necessary for the facilitation, administration, and promotion of secondary market operations, and for assessing the increase of small business access to capital at reasonable rates and terms as a result of secondary market operations.

"(4) Nothing in this subsection or subsection (g) of this section shall be interpreted to impede or extinguish the right of the borrower or the successor in interest to such borrower to prepay (in whole or in part) any loan made pursuant to section 7(a) of this Act, the guaranteed portion of which may be included in such trust or pool, or to impede or extinguish the rights of any party pursuant to section 5(e), 7(a)(6), or 7(a)(8).

15 USC 636.

15 USC 634, 636.

"(g)(1) The Administration is authorized to issue trust certificates representing ownership of all or a fractional part of the guaranteed portion of one or more loans which have been guaranteed by the Administration under this Act, except those under section 7(a)(13): *Provided,* That such trust certificates shall be based on and backed by a trust or pool approved by the Administration and composed solely of the entire guaranteed portion of such loans.

Trust certificates.

15 USC 636.

"(2) The Administration is authorized, upon such terms and conditions as are deemed appropriate, to guarantee the timely payment of the principal of and interest on trust certificates issued by the Administration or its agent for purposes of this subsection. Such guarantee shall be limited to the extent of principal and interest on the guaranteed portions of loans which compose the trust or pool. In the event that a loan in such trust or pool is prepaid, either voluntarily or in the event of default, the guarantee of timely payment of principal and interest on the trust certificates shall be reduced in proportion to the amount of principal and interest such prepaid loan represents in the trust or pool. Interest on prepaid or defaulted loans shall accrue and be guaranteed by the Administration only through the date of payment on the guarantee. During the term of the trust certificate, it may be called for redemption due to prepayment or default of all loans constituting the pool.

U.S. payments.

"(3) The full faith and credit of the United States is pledged to the payment of all amounts which may be required to be paid under any guarantee of such trust certificates issued by the Administration or its agent pursuant to this subsection.

Prohibition.

"(4) The Administration shall not collect any fee for any guarantee under this subsection: *Provided,* That nothing herein shall preclude any agent of the Administration from collecting a fee approved by the Administration for the functions described in subsection (h)(2).

"(5)(A) In the event the Administration pays a claim under a guarantee issued under this subsection, it shall be subrogated fully to the rights satisfied by such payment.

"(B) No State or local law, and no Federal law, shall preclude or limit the exercise by the Administration of its ownership rights in the portions of loans constituting the trust or pool against which the trust certificates are issued.

"(h) Upon the adoption of final rules and regulations, the Administration shall—

"(1) provide for a central registration of all loans and trust certificates sold pursuant to subsections (f) and (g) of this section. Such central registration shall include, with respect to each sale, an identification of each lender who has sold the loan; the interest rate paid by the borrower to the lender; the lender's servicing fee; whether the loan is for a fixed rate or variable rate; an identification of each purchaser of the loan or trust certificate; the price paid by the purchaser for the loan or trust certificate; the interest rate paid on the loan or trust certificate; the fees of an agent for carrying out the functions described in paragraph (2) below; and such other information as the Administration deems appropriate;

"(2) contract with an agent to carry out on behalf of the Administration the central registration functions of this section and the issuance of trust certificates to facilitate pooling. Such agent shall provide a fidelity bond or insurance in such amounts as the Administration determines to be necessary to fully protect the interest of the Government;

"(3) prior to any sale, require the seller to disclose to a purchaser of the guaranteed portion of a loan guaranteed under this Act and to the purchaser of a trust certificate issued pursuant to subsection (g), information on the terms, conditions, and yield of such instrument. As used in this paragraph, if the instrument being sold is a loan, the term 'seller' does not

include (A) an entity which made the loan or (B) any individual or entity which sells three or fewer guaranteed loans per year; and

"(4) have the authority to regulate brokers and dealers in guaranteed loans and trust certificates sold pursuant to subsections (f) and (g) of this section.".

SEC. 3. (a) Within ninety days after the date of enactment of this Act, the Small Business Administration shall develop and promulgate final rules and regulations to implement the central registration provisions provided for in section 5(h)(1) of the Small Business Act, and shall contract with an agent for an initial period of not to exceed two years to carry out the functions provided for in section 5(h)(2) of such Act. Regulations. 15 USC 634 note. *Ante*, p. 329.

(b) Within nine months after the date of enactment of this Act, the Small Business Administration shall consult with representatives of appropriate Federal and State agencies and officials, the securities industry, financial institutions and lenders, and small business persons, and shall develop and promulgate final rules and regulations to implement this Act other than as provided for in subsection (a). Regulations.

(c) The Small Business Administration shall not implement any of the provisions under section 5(g) of the Small Business Act, as amended, until final rules and regulations become effective. *Ante*, p. 329.

SEC. 4. Section 10 of the Small Business Act is amended by adding at the end thereof the following new subsection: Report. 15 USC 639.

"(h) The Administration shall transmit, not later than March 31 of each year, to the Committees on Small Business of the Senate and House of Representatives a report on the secondary market operations during the preceding calendar year. This report shall include, but not be limited to, (1) the number and the total dollar amount of loans sold into the secondary market and the distribution of such loans by size of loan, size of lender, geographic location of lender, interest rate, maturity, lender servicing fees, whether the rate is fixed or variable, and premium paid; (2) the number and dollar amount of loans resold in the secondary market with a distribution by size of loan, interest rate, and premiums; (3) the number and total dollar amount of pools formed; (4) the number and total dollar amount of loans in each pool; (5) the dollar amount, interest rate, and terms on each loan in each pool and whether the rate is fixed or variable; (6) the number, face value, interest rate, and terms of the trust certificates issued for each pool; (7) to the maximum extent possible, the use by the lender of the proceeds of sales of loans in the secondary market for additional lending to small business concerns; and (8) an analysis of the information reported in (1) through (7) to assess small businesses' access to capital at reasonable rates and terms as a result of secondary market operations.".

SEC. 5. Section 4(c)(1)(B) and section 4(c)(2)(B) of the Small Business Act are each amended by inserting "5(g)," immediately after the word "sections". 15 USC 633.

Public Law 98-362
98th Congress

An Act

To amend the Small Business Act to establish a small business computer security and education program, and for other purposes.

July 16, 1984
[H.R. 3075]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Small Business Computer Security and Education Act of 1984
15 USC 631 note.

SHORT TITLE

SECTION 1. This Act may be cited as the "Small Business Computer Security and Education Act of 1984".

FINDING AND PURPOSES

Congress.
Science and technology
15 USC 633 note

SEC. 2. (a) The Congress hereby finds that—

(1) there is increased dependency on, and proliferation of, information technology (including computers, data networks, and other communication devices) in the small business community;

(2) such technology has permitted an increase in criminal activity against small business;

Crimes and misdemeanors

(3) small businesses in particular frequently lack the education and awareness of computer security techniques and technologies which would enable them to protect their computer systems from unauthorized access and the manipulation or destruction of their computer hardware, software, and stored data;

(4) profitmaking organizations have substantial expertise in computer technology, communications, and management assistance that is not otherwise available; and

(5) the use of this expertise in the Small Business Administration's training delivery system would improve substantially the quantity and quality of the agency's management assistance programs.

(b) The purposes of this Act are—

(1) to improve the management by small businesses of their information technology,

(2) to educate and encourage small businesses to protect such technology from intentional or unintentional manipulation or destruction; and

(3) to permit cooperation with profitmaking organizations in providing management assistance to small business.

COMPUTER SECURITY AND EDUCATION ADVISORY COUNCIL

SEC. 3. Section 4(b) of the Small Business Act (15 U.S.C. 633(b)) is amended by adding at the end thereof the following:

Establishment

"(3)(A) The Administrator shall, not later than ninety days after the effective date of the Small Business Computer Security and Education Act of 1984, establish an advisory council to be known as

Supra

the Small Business Computer Security and Education Advisory Council (hereinafter referred to as the 'advisory council').

"(B) The advisory council shall consist of the following members:

"(i) an official of the Small Business Administration, appointed by the Administrator;

"(ii) an official of the Institute for Computer Sciences and Technology of the Department of Commerce, appointed by the Secretary of Commerce;

"(iii) an official of the Department of Justice, appointed by the Attorney General, who is knowledgeable about issues of computer security and its protection;

"(iv) an official of the Department of Defense, appointed by the Secretary of Defense, who is knowledgeable about issues of computer security;

"(v) one individual, appointed by the Administrator, who is representative of the interests of the manufacturers of computer hardware to small business concerns;

"(vi) one individual, appointed by the Administrator, who is representative of the interests of the manufacturers of computer software to small business concerns;

"(vii) one individual, appointed by the Administrator, who is representative of the interests of the providers of computer liability insurance to small business concerns;

"(viii) one individual, appointed by the Administrator, who is representative of the interests of the providers of computer security equipment and services to small business concerns;

"(ix) one individual, appointed by the Administrator, who is representative of the interests of associations of small business concerns, other than small business concerns engaging in any of the activities described in clauses (v) through (viii); and

"(x) such additional qualified individuals from the private sector, appointed by the Administrator, as the Administrator determines to be appropriate.

"(C) It shall be the function of the advisory council to advise the Administration on—

"(i) the nature and scope of computer crimes committed against small business concerns;

"(ii) the effectiveness of Federal and State law in deterring computer-related criminal activity or prosecuting computer-related crimes;

"(iii) the effectiveness of computer technology and management techniques available to small business for increasing their computer security;

"(iv) the development of information and guidelines to be made available to the Administrator to assist small business concerns in evaluating the security of computer systems; and

"(v) such other appropriate functions of the small business computer security and education program.

"(D) The Administrator shall designate one of the non-Federal members of the advisory council as its chairperson. The advisory council shall meet at least annually and at such other times as requested by the Administrator. A majority of the members of the advisory council shall constitute a quorum. Vacancies on the council shall be filled in the same manner as the original appointment.

"(E) Each member of the advisory council shall serve without additional pay, allowances, or benefits by reason of such service. Each non-Federal member shall be reimbursed for actual expenses,

including travel expenses, as authorized by section 5703 of title 5, United States Code.

"(F) Upon request of the chairperson of the advisory council, the Administrator may request directly from any Federal agency information necessary to enable the advisory council to carry out its functions under the Small Business Computer Security and Education Act of 1984. Upon the request of the Administrator, the head of such agency shall furnish to the Administrator such information, subject to the requirements of section 552 of title 5, United States Code.". Information, disclosure.

Ante, p. 431.

COMPUTER SECURITY AND EDUCATION PROGRAM

SEC. 4. Section 4(b) of the Small Business Act (15 U.S.C. 633(b)) is further amended by adding at the end thereof the following: *Ante*, p. 431.

"(4)(A) The Administrator shall establish a small business computer security and education program to—

"(i) provide small business concerns information regarding—

"(I) utilization and management of computer technology;

"(II) computer crimes committed against small business concerns; and

"(III) security for computers owned or utilized by small business concerns;

"(ii) provide for periodic forums for small business concerns to improve their knowledge of the matters described in clause (i); and

"(iii) provide training opportunities to educate small business users on computer security techniques.

"(B) The Administrator, after consultation with the Director of the Institute of Computer Sciences and Technology within the Department of Commerce, shall develop information and materials to carry out the activities described in subparagraph (A) of this paragraph.".

PRIVATE SECTOR COOPERATION

SEC. 5. (a) Section 8(b)(1)(A) of the Small Business Act is amended— 15 USC 637.

(1) by inserting "computer security," after "wage incentives,"; and

(2) by striking at the end thereof "Administration; and" and by inserting the following: "Administration. Such assistance also may be provided to small business concerns by the Administration through cooperation with a profit-making concern (hereafter in this paragraph referred to as a "cosponsor") to provide training: *Provided*, That the Administration shall take such actions as it deems appropriate to ensure that the cooperation does not constitute or imply an endorsement by the Administration of the products or services of the cosponsor, to avoid unnecessary promotion of the products or services of the cosponsor, and to minimize utilization of any one cosponsor in a marketing area. Such actions shall include, but not be limited to: (i) developing an agreement which specifies the standard terms and conditions of the cooperation, the use of which shall be mandatory; (ii) prohibiting any fee or charge from being imposed upon any small business concern for receiving assistance in excess of a minimal amount to cover the direct costs of providing such assistance; (iii) prohibiting the release to the cosponsor of any of the Administration's lists of names and addresses of small business concerns; and (iv) requiring that all Prohibitions.

printed materials which contain the names of both the Administration and the cosponsor include a prominent disclaimer that the cooperation does not constitute or imply an endorsement by the Administration of the products or services of the cosponsor."

Report. 15 USC 637 note.

(b) Not later than December 1, 1987 the Small Business Administration shall report to the Committees on Small Business of the Senate and the United States House of Representatives on the impact of the assistance provided in cooperation with profitmaking concerns pursuant to the amendment made by section 5(a)(2) of the Small Business Computer Security and Education Act of 1984. The report shall include information on benefits provided to small business concerns assisted by the Administration's cooperation with profitmaking concerns and any negative impact upon small businesses resulting from such cooperation with profitmaking concerns.

Ante, p. 433.

COMPUTER CRIME DEFINITION

15 USC 632.

SEC. 6. Section 3 of the Small Business Act is amended by adding at the end thereof the following—

"(j) For purposes of this Act—

"(1) the term 'computer crime' means—

"(A) any crime committed against a small business concern by means of the use of a computer; and

"(B) any crime involving the illegal use of, or tampering with, a computer owned or utilized by a small business concern.".

EFFECTIVE DATES

15 USC 633 note.

SEC. 7. (a) This Act shall take effect on October 1, 1984.

15 USC 633, 637.

(b) The amendments made to section 4(b)(3) of the Small Business Act by section 3 of this Act and the amendments made to section 8(b)(1)(A) of the Small Business Act by section 5(a)(2) of this Act are repealed on October 1, 1988. Nothing in this section shall preclude the Administrator from continuing such committee under the authority of section 8(b)(3) of the Small Business Act and the Federal Advisory Committee Act.

Approved July 16, 1984.

LEGISLATIVE HISTORY: H.R. 3075:

HOUSE REPORT No. 98-423, Pt. 1 (Comm. on Small Business).
SENATE REPORT No. 98-438 (Comm. on Small Business).
CONGRESSIONAL RECORD:
Vol. 129 (1983): Oct. 24, considered and passed House.
Vol. 129 (1984): May 24 considered and passed Senate, amended.
June 27, House concurred in Senate amendments with amendments; Senate concurred in House Amendments.

APPENDIX M

PUBLIC LAW 98-395—AUG. 21, 1984

SMALL BUSINESS DEVELOPMENT CENTER IMPROVEMENT ACT OF 1984

Public Law 98-395
98th Congress

An Act

Aug. 21, 1984
[S. 1429]

To amend the Small Business Act to extend and strengthen the Small Business Development Center Program, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Small Business Development Center Improvement Act of 1984.
15 USC 631 note.
15 USC 648.

SECTION 1. This Act may be cited as the "Small Business Development Center Improvement Act of 1984".

SEC. 2. Section 21 of the Small Business Act is amended as follows:

(1) by adding at the end of paragraph (1) of subsection (a) the following: "The term of such grants shall be made on a calendar year basis or to coincide with the Federal fiscal year.";

(2) by striking paragraph (2) of subsection (a) and inserting the following:

"(2) The Small Business Development Center Program shall be under the general management and oversight of the Administration, but with recognition that a partnership exists under this section between the Administration and the applicant for the delivery of assistance to the small business community. Services shall be provided pursuant to a negotiated cooperative agreement with full participation of both parties.

"(3) Except as provided in paragraph (4), the Administration shall require, as a condition to any grant (or amendment or modification thereof) made to an applicant under this section that an additional amount (excluding any fees collected from recipients of such assistance) equal to the amount of such grant be provided from sources other than the Federal Government: *Provided,* That the additional amount shall not include any amount of indirect costs or in-kind contributions paid for under any Federal program, nor shall such indirect costs or in-kind contributions exceed 50 per centum of the non-Federal additional amount: *Provided further,* That no recipient of funds under this section shall receive a grant which would exceed its pro rata share of a $65,000,000 program based upon the population to be served by the Small Business Development Center as compared to the total population in the United States, or $200,000, whichever is greater.

"(4) In lieu of the matching funds required in paragraph (3), the Administration shall require as a condition of any grant (or amendment or modification thereof) made to an applicant under this section, that a matching amount (excluding any fees collected from recipients of such assistance) equal to the amount of such grant be provided from sources other than the Federal Government, to be comprised of not less than 50 per centum cash and not more than 50 per centum of indirect costs and in-kind contributions as follows:

"(A) for grants for performance commencing on or after October 1, 1987 if the applicant is located in a State which received its grant for performance under this section on or before August 1, 1984;

"(B) for grants for performance commencing on or after October 1, 1988 if the applicant is located in a State which receives its initial grant for performance under this section commencing after August 1, 1984 and prior to October 1, 1986; and

"(C) for grants for performance commencing on or after October 1, 1986 if the applicant is located in a State which receives its initial grant for performance under this section commencing after October 1, 1986:

Provided, That this matching amount shall not include any indirect costs or in-kind contributions derived from any Federal program: *Provided further*, That no recipient of funds under this section shall receive a grant which would exceed its pro rata share of a $65,000,000 program based upon the population to be served by the Small Business Development Center as compared to the total population in the United States, or $200,000 whichever is greater.";

(3) by striking from paragraph (1) of subsection (b) "During fiscal years 1981, 1982, and 1983, financial" and by inserting in lieu thereof "Financial";

(4) by inserting after the period at the end of the first sentence of paragraph (2) of subsection (c) the following: "The facilities and staff of each Small Business Development Center shall be located in such places as to provide maximum accessibility and benefits to the small businesses which the center is intended to serve."; Public availability.

(5) by amending subparagraph (2)(A) of subsection (c) to read as follows:

"(A) a full-time staff, including a full-time director who shall have the authority to make expenditures under the center's budget and who shall manage the program activities;";

(6) by striking subsection (e) and inserting in lieu thereof the following:

"(e) The National Science Foundation is authorized and directed to cooperate with the Administration and with the Small Business Development Centers in developing and establishing programs to support the centers."; National Science Foundation.

(7) by striking from the second sentence of paragraph (2) of subsection (h) the word "quarterly" and inserting in lieu thereof "semiannually";

(8) by striking from paragraph (1) of subsection (i) the word "may" and inserting in lieu thereof "shall"; and

(9) by striking subsection (j) and inserting in lieu thereof the following:

"(j) Within six months of the date of enactment of the Small Business Development Center Improvement Act of 1984, the Administration shall develop and implement a program proposal for onsite evaluation of each Small Business Development Center. Such evaluation shall be conducted at least once every two years and shall provide for the participation of a representative of at least one other Small Business Development Center on a cost-reimbursement basis.". Study. *Ante*, p. 1366.

SEC. 3. Section 20 of the Small Business Act is amended as follows: 15 USC 631 note.

(1) by inserting the following after the second sentence in subsection (a): "For fiscal year 1986 and every year thereafter, there are hereby authorized to be appropriated such sums as may be necessary and appropriate to be available solely (1) to carry out the provisions and purposes of the Small Business

Development Center Program in section 21, but not to exceed the level as specified in subsection (a) of such section, (2) to pay the expenses of the National Small Business Development Center Advisory Board as provided in section 21(h), and (3) to reimburse centers for participation in evaluations as provided in section 21(j).''; and

(2) by adding the following new subsection:

Appropriations authorization.

''(t) There are hereby authorized to be appropriated for fiscal year 1985, $30,000,000 to be available solely (1) to carry out the provisions and purposes of the Small Business Development Center Program in section 21, (2) to pay the expenses of the National Small Business Development Center Advisory Board as provided in subsection 21(h), and (3) to reimburse centers for participation in evaluations as provided in subsection 21(j).''

SEC. 4. Section 204 of the Small Business Development Center Act of 1980 (Public Law 96-302), as amended, is further amended by striking ''January 1, 1985'' and by inserting in lieu thereof ''October 1, 1990''.

97 Stat. 1125.

15 USC 648 note.

SEC. 5. Section 7(d)(1) of the Small Business Act is amended to read as follows:

15 USC 636.

''(d)(1) The Administration shall not fund any Small Business Development Center or any variation thereof, except as authorized in section 21 of this Act.''.

Approved August 21, 1984.

LEGISLATIVE HISTORY—S. 1429 (H.R. 4013) (HR. 5334):

HOUSE REPORTS: No. 98-739 accompanying H.R. 5334 (Comm. on Small Business) and No. 98-955 (Comm. of Conference).
SENATE REPORT No. 98-309 (Comm. on Small Business).
CONGRESSIONAL RECORD:
Vol. 129 (1983): Nov. 17, considered and passed Senate.
Vol. 130 (1984): May 14, H.R. 5334 considered and passed House; S. 1429, amended, passed in lieu.
Aug. 6, Senate agreed to conference report.
Aug. 8, House agreed to conference report.

APPENDIX N

PUBLIC LAW 98-577—OCT. 30, 1984

SMALL BUSINESS AND FEDERAL PROCUREMENT COMPETITION ENHANCEMENT ACT OF 1984

Public Law 98-577
98th Congress

An Act

Oct. 30, 1984
[H.R. 4209]

To amend the Small Business Act, the Federal Property and Administrative Services Act of 1949, and the Office of Federal Procurement Policy Act to enhance competition in Government procurement, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Small Business and Federal Procurement Competition Enhancement Act of 1984.
41 USC 251 note.
Contracts, U.S.

SHORT TITLE; TABLE OF CONTENTS

SECTION 1. This Act, together with the following table of contents, may be cited as the "Small Business and Federal Procurement Competition Enhancement Act of 1984".

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PURPOSES

41 USC 251 note.

SEC. 101. The purposes of this Act are to—

(1) eliminate procurement procedures and practices that unnecessarily inhibit full and open competition for contracts;

(2) promote the use of contracting opportunities as a means to expand the industrial base of the United States in order to ensure adequate responsive capability of the economy to the increased demands of the Government in times of national emergency; and

(3) foster opportunities for the increased participation in the competitive procurement process of small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals. Disadvantaged persons.

DEFINITIONS

SEC. 102. Section 4 of the Office of Federal Policy Procurement Act is amended— *Ante*, p. 1195.

(1) by striking out "and" at the end of paragraph (7);

(2) by striking out the period at the end of paragraph (8) and inserting in lieu thereof a semicolon; and

(3) by adding at the end thereof the following new paragraphs:

"(9) the term 'technical data' means recorded information (regardless of the form or method of the recording) of a scientific or technical nature (including computer software documentation) relating to supplies procured by an agency. Such term does not include computer software or financial, administrative, cost or pricing, or management data or other information incidental to contract administration;

"(10)(A) the term 'major system' means a combination of elements that will function together to produce the capabilities required to fulfill a mission need, which elements may include hardware, equipment, software or any combination thereof, but excludes construction or other improvements to real property; and

"(B) a system shall be considered a major system if (i) the Department of Defense is responsible for the system and the total expenditures for research, development, test and evaluation for the system are estimated to be more than $75,000,000 (based on fiscal year 1980 constant dollars) or the eventual total expenditure for procurement of more than $300,000,000 (based on fiscal year 1980 constant dollars); (ii) a civilian agency is responsible for the system and total expenditures for the system are estimated to exceed $750,000 (based on fiscal year 1980 constant dollars) or the dollar threshold for a 'major system' established by the agency pursuant to Office of Management and Budget (OMB) Circular A-109, entitled 'Major Systems Acquisitions', whichever is greater; or (iii) the system is designated a 'major system' by the head of the agency responsible for the system; and

"(11) the term 'item', 'item of supply', or 'supplies' means any individual part, component, subassembly, assembly, or subsystem integral to a major system, and other property which may be replaced during the service life of the system, and includes spare parts and replenishment spare parts, but does not include packaging or labeling associated with shipment or identification of an 'item'.".

TITLE II—AMENDMENTS TO THE FEDERAL PROPERTY AND ADMINISTRATIVE SERVICES ACT OF 1949

PLANNING FOR FUTURE COMPETITION

Ante, p. 1179.

SEC. 201. (a) Section 303B of the Federal Property and Administrative Services Act of 1949 (hereafter in this title referred to as "the Act") is amended by adding at the end thereof the following new subsection:

Science and technology.

"(f)(1)(A) In preparing a solicitation for the award of a development contract for a major system, the head of an agency shall consider requiring in the solicitation that an offeror include in its offer proposals described in subparagraph (B). In determining whether to require such proposals, the head of the agency shall give due consideration to the purposes for which the system is being procured and the technology necessary to meet the system's required capabilities. If such proposals are required, the head of the agency shall consider them in evaluating the offeror's price.

"(B) The proposals that the head of an agency is to consider requiring in a solicitation for the award of a development contract are the following:

"(i) Proposals to incorporate in the design of the major system items which are currently available within the supply system of the Federal agency responsible for the major system, available elsewhere in the national supply system, or commercially available from more than one source.

"(ii) With respect to items that are likely to be required in substantial quantities during the system's service life, proposals to incorporate in the design of the major system items which the United States will be able to acquire competitively in the future.

"(2)(A) In preparing a solicitation for the award of a production contract for a major system, the head of an agency shall consider requiring in the solicitation that an offeror include in its offer proposals described in subparagraph (B). In determining whether to require such proposals, the head of the agency shall give due consideration to the purposes for which the system is being procured and the technology necessary to meet the system's required capabilities. If such proposals are required, the head of the agency shall consider them in evaluating the offeror's price.

"(B) The proposals that the head of an agency is to consider requiring in a solicitation for the award of a production contract are proposals identifying opportunities to ensure that the United States will be able to obtain on a competitive basis items procured in connection with the system that are likely to be reprocured in substantial quantities during the service life of the system. Proposals submitted in response to such requirement may include the following:

"(i) Proposals to provide to the United States the right to use technical data to be provided under the contract for competitive reprocurement of the item, together with the cost to the United States, if any, of acquiring such technical data and the right to use such data.

"(ii) Proposals for the qualification or development of multiple sources of supply for the item.

"(3) If the head of an agency is making a noncompetitive award of a development contract or a production contract for a major system,

the factors specified in paragraphs (1) and (2) to be considered in evaluating an offer for a contract may be considered as objectives in negotiating the contract to be awarded.".

(b) The amendment made by subsection (a) shall apply with respect to any solicitation issued more than 180 days after the date of the enactment of this Act. Effective date. 41 USC 253b note.

ENCOURAGING NEW COMPETITORS

SEC. 202. (a) Title III of the Act is amended by inserting after section 303C the following new section:

"ENCOURAGEMENT OF NEW COMPETITION

"SEC. 303D. (a) In this section, 'qualification requirement' means a requirement for testing or other quality assurance demonstration that must be completed by an offeror before award of a contract. 41 USC 253c.

"(b) Except as provided in subsection (c), the head of the agency shall, before enforcing any qualification requirement—

"(1) prepare a written justification stating the necessity for establishing the qualification requirement and specify why the qualification requirement must be demonstrated before contract award;

"(2) specify in writing and make available to a potential offeror upon request all requirements which a prospective offeror, or its product, must satisfy in order to become qualified, such requirements to be limited to those least restrictive to meet the purposes necessitating the establishment of the qualification requirement;

"(3) specify an estimate of the costs of testing and evaluation likely to be incurred by a potential offeror in order to become qualified;

"(4) ensure that a potential offeror is provided, upon request, a prompt opportunity to demonstrate at its own expense (except as provided in subsection (d)) its ability to meet the standards specified for qualification using qualified personnel and facilities of the agency concerned or of another agency obtained through interagency agreement, or under contract, or other methods approved by the agency (including use of approved testing and evaluation services not provided under contract to the agency);

"(5) if testing and evaluation services are provided under contract to the agency for the purposes of clause (4), provide to the extent possible that such services be provided by a contractor who is not expected to benefit from an absence of additional qualified sources and who shall be required in such contract to adhere to any restriction on technical data asserted by the potential offeror seeking qualification; and

"(6) ensure that a potential offeror seeking qualification is promptly informed as to whether qualification is attained and, in the event qualification is not attained, is promptly furnished specific information why qualification was not attained.

"(c)(1) Subsection (b) of this section does not apply with respect to a qualification requirement established by statute prior to the date of enactment of this section.

"(2) Except as provided in paragraph (3), if it is unreasonable to specify the standards for qualification which a prospective offeror or

accordance with the requirements of subsection (b). The preceding sentence does not apply in the case of a qualification requirement for which a waiver is in effect under subsection (c)(2).

"(f) Except in an emergency as determined by the head of the agency, whenever the head of the agency determines not to enforce a qualification requirement for a solicitation, the agency may not thereafter enforce that qualification requirement unless the agency complies with the requirements of subsection (b).".

(b) The amendment made by subsection (a) shall apply with respect to solicitations issued more than 180 days after the date of enactment of this Act.

Effective date. 41 USC 253c note.

VALIDATION OF PROPRIETARY DATA RESTRICTIONS

SEC. 203. (a) Title III of the Act is amended by inserting after section 303D (as added by section 202 of this Act) the following new section:

"VALIDATION OF PROPRIETARY DATA RESTRICTIONS

"SEC. 303E. (a) A contract for property or services entered into by an executive agency which provides for the delivery of technical data, shall provide that—

Science and technology. 41 USC 253d

"(1) a contractor or subcontractor at any tier shall be prepared to furnish to the contracting officer a written justification for any restriction asserted by the contractor or subcontractor on the right of the United States to use such technical data; and

"(2) the contracting officer may review the validity of any restriction asserted by the contractor or by a subcontractor under the contract on the right of the United States to use technical data furnished to the United States under the contract if the contracting officer determines that reasonable grounds exist to question the current validity of the asserted restriction and that the continued adherence to the asserted restriction by the United States would make it impracticable to procure the item competitively at a later time.

"(b) If after such review the contracting officer determines that a challenge to the asserted restriction is warranted, the contracting officer shall provide written notice to the contractor or subcontractor asserting the restriction. Such notice shall state—

"(1) the grounds for challenging the asserted restriction; and

"(2) the requirement for a response within 60 days justifying the current validity of the asserted restriction.

"(c) If a contractor or subcontractor asserting a restriction subject to this section submits to the contracting officer a written request, showing the need for additional time to comply with the requirement to justify the current validity of the asserted restriction, additional time to adequately permit the submission of such justification shall be provided by the contracting officer as appropriate. If a party asserting a restriction receives notices of challenges to restrictions on technical data from more than one contracting officer, and notifies each contracting officer of the existence of more than one challenge, the contracting officer initiating the first in time challenge, after consultation with the party asserting the restriction and the other contracting officers, shall formulate a schedule of responses to each of the challenges that will afford the party asserting the restriction with an equitable opportunity to respond to each such challenge.

"(d)(1) Upon a failure by the contractor or subcontractor to submit any response under subsection (b), the contracting officer shall issue a decision pertaining to the validity of the asserted restriction.

"(2) If a justification is submitted in response to the notice provided pursuant to subsection (b), a contracting officer shall within 60 days of receipt of any justification submitted, issue a decision or notify the party asserting the restriction of the time within which a decision will be issued.

"(e) If a claim pertaining to the validity of the asserted restriction is submitted in writing to a contracting officer by a contractor or subcontractor at any tier, such claim shall be considered a claim within the meaning of the Contract Disputes Act of 1978 (41 U.S.C. 601 et seq.).

"(f)(1) If, upon final disposition, the contracting officer's challenge to the restriction on the right of the United States to use such technical data is sustained—

"(A) the restriction on the right of the United States to use the technical data shall be cancelled; and

"(B) if the asserted restriction is found not to be substantially justified, the contractor or subcontractor, as appropriate, shall be liable to the United States for payment of the cost to the United States of reviewing the asserted restriction and the fees and other expenses (as defined in section 2412(d)(2)(A) of title 28) incurred by the United States in challenging the asserted restriction, unless special circumstances would make such payment unjust.

"(2) If, upon final disposition, the contracting officer's challenge to the restriction on the right of the United States to use such technical data is not sustained—

"(A) the United States shall continue to be bound by the restriction; and

"(B) the United States shall be liable for payment to the party asserting the restriction for fees and other expenses (as defined in section 2412(d)(2)(A) of title 28) incurred by the party asserting the restriction in defending the asserted restriction if the challenge by the United States is found not to be made in good faith.".

Effective date. 41 USC 253d note.

(b) The amendment made by subsection (a) shall apply with respect to solicitations issued more than 60 days after the date of the enactment of this Act.

COMMERCIAL PRICING FOR SUPPLIES

SEC. 204. (a) Title III of the Act is further amended by inserting after section 303E (as added by section 203 of this Act) the following new section:

"COMMERCIAL PRICING FOR SUPPLIES

41 USC 253e.

"SEC. 303F. (a) Except in the case of an offer submitted with a written statement under subsection (b)(2) and except as provided in subsection (c), a contract entered into using other than competitive procedures by an executive agency for the purchase of items that are offered for sale to the public may not result in a price to the United States that exceeds the lowest price at which such items are sold by the contractor to the public.

"(b) A person who submits an offer to an executive agency for the supply of items that it offers for sale to the public (1) shall certify in

the offer that the price offered is not more than its lowest commercial price for the items, or (2) shall submit with the offer a written statement specifying the amount of the difference between its lowest commercial price for the items and the price offered, and providing a justification for that difference.

"(c) Subsections (a) and (b) do not apply to a contract if the contracting officer determines that the use of the price otherwise required by subsection (a) for such contract is not appropriate because of—

"(1) national security considerations; or

"(2) differences in quantities, quality, delivery, or other terms and conditions of the contract from commercial contract terms.".

(b) The amendment made by subsection (a) shall take effect at the end of the 180-day period beginning on the date of the enactment of this Act.

Effective date. 41 USC 253e note.

ECONOMIC ORDER QUANTITIES

SEC. 205. (a) Title III of the Act is further amended by inserting after section 303F (as added by section 204 of this Act) the following new section:

"ECONOMIC ORDER QUANTITIES

"SEC. 303G. (a) Each executive agency shall procure supplies in such quantity as (A) will result in the total cost and unit cost most advantageous to the United States, where practicable, and (B) does not exceed the quantity reasonably expected to be required by the agency. 41 USC 253f.

"(b) Each solicitation for a contract for supplies shall, if practicable, include a provision inviting each offeror responding to the solicitation to state an opinion on whether the quantity of the supplies proposed to be procured is economically advantageous to the United States and, if applicable, to recommend a quantity or quantities which would be more economically advantageous to the United States. Each such recommendation shall include a quotation of the total price and the unit price for supplies procured in each recommended quantity.".

(b) The amendment made by subsection (a) shall take effect at the end of the 180-day period beginning on the date of the enactment of this Act.

Effective date. 41 USC 253f note.

PROHIBITION OF CONTRACTORS LIMITING SUBCONTRACTOR SALES DIRECTLY TO THE UNITED STATES

SEC. 206. (a) Title III of the Act is further amended by inserting after section 303G (as added by section 205 of this Act) the following new section:

"PROHIBITION OF CONTRACTORS LIMITING SUBCONTRACTOR SALES DIRECTLY TO THE UNITED STATES

"SEC. 303H. (a) Each contract for the purchase of property or services made by an executive agency shall provide that the contractor will not— 41 USC 253g.

"(1) enter into any agreement with a subcontractor under the contract that has the effect of unreasonably restricting sales by the subcontractor directly to the United States of any item or

process (including computer software) made or furnished by the subcontractor under the contract (or any follow-on production contract); or

"(2) otherwise act to restrict unreasonably the ability of a subcontractor to make sales to the United States described in clause (1).

"(b) This section does not prohibit a contractor from asserting rights it otherwise has under law.".

Effective date. 41 USC 253g note.

(b) The amendment made by subsection (a) shall apply with respect to solicitations made more than 180 days after the date of the enactment of this Act.

CLERICAL AMENDMENT

SEC. 207. The table of contents of the Act is amended by inserting after the item relating to section 303C the following new items:

"Sec. 303D. Encouragement of new competition.
"Sec. 303E. Validation of proprietary data restrictions.
"Sec. 303F. Commercial pricing for supplies.
"Sec. 303G. Economic order quantities
"Sec. 303H. Prohibition of contractors limiting subcontractor sales directly to the United States.".

TITLE III—AMENDMENTS TO THE OFFICE OF FEDERAL PROCUREMENT POLICY ACT

TECHNICAL DATA MANAGEMENT

SEC. 301. (a) The Office of Federal Procurement Policy Act (hereafter in this title referred to as "the Act") is amended by redesignating section 21 as section 23 and by inserting after section 20 the following new section:

Ante, p. 1198.

"RIGHTS IN TECHNICAL DATA

Science and technology. 41 USC 418a.

"SEC. 21. (a) The legitimate proprietary interest of the United States and of a contractor in technical or other data shall be defined in regulations prescribed as part of the single system of Government-wide procurement regulations as defined in section 4(4) of this Act. Such regulations may not impair any right of the United States or of any contractor with respect to patents or copyrights or any other right in technical data otherwise established by law. Such regulations shall provide, with respect to executive agencies that are subject to the provisions of title III of the Federal Property and Administrative Services Act of 1949, that the United States may not require persons who have developed products or processes offered or to be offered for sale to the public as a condition for the procurement of such products or processes by the United States, to provide to the United States technical data relating to the design, development, or manufacture of such products or processes (except for such data as may be necessary for the United States to operate and maintain the product or use the process if obtained by the United States as an element of performance under the contract).

Copyrights.

41 USC 251.

"(b)(1) Except as otherwise expressly provided by Federal statute, the regulations prescribed pursuant to subsection (a) shall provide, with respect to executive agencies that are subject to the provisions of title III of the Federal Property and Administrative Services Act of 1949, that the United States shall have unlimited rights in

technical data developed exclusively with Federal funds if delivery of such data—

"(A) was required as an element of performance under a contract; and

"(B) is needed to ensure the competitive acquisition of supplies or services that will be required in substantial quantities in the future.

"(2) Except as otherwise expressly provided by Federal statute, the regulations prescribed pursuant to subsection (a) shall provide, with respect to executive agencies that are subject to the provisions of title III of the Federal Property and Administrative Services Act of 1949, that the United States (and each agency thereof) shall have an unrestricted, royalty-free right to use, or to have its contractors use, for governmental purposes (excluding publication outside the Government) technical data developed exclusively with Federal funds. 41 USC 251.

"(3) The requirements of paragraphs (1) and (2) shall be in addition to and not in lieu of any other rights that the United States may have pursuant to law.

"(c) The following factors shall be considered in prescribing regulations pursuant to subsection (a):

"(1) Whether the technical data was developed—

"(A) exclusively with Federal funds;

"(B) exclusively at private expense; or

"(C) in part with Federal funds and in part at private expense.

"(2) The statement of congressional policy and objectives in section 200 of title 35, the statement of purposes in section 2(b) of the Small Business Innovation Development Act of 1982 (Public Law 97-219; 15 U.S.C. 638 note), and the declaration of policy in section 2 of the Small Business Act (15 U.S.C. 631).

"(3) The interest of the United States in increasing competition and lowering costs by developing and locating alternative sources of supply and manufacture.

"(d) Regulations prescribed under subsection (a) shall require that a contract for property or services entered into by an executive agency contain appropriate provisions relating to technical data, including provisions— Regulations.

"(1) defining the respective rights of the United States and the contractor or subcontractor (at any tier) regarding any technical data to be delivered under the contract;

"(2) specifying the technical data, if any, to be delivered under the contract and delivery schedules for such delivery;

"(3) establishing or referencing procedures for determining the acceptability of technical data to be delivered under the contract;

"(4) establishing separate contract line items for the technical data, if any, to be delivered under the contract;

"(5) to the maximum practicable extent, identifying, in advance of delivery, technical data which is to be delivered with restrictions on the right of the United States to use such data;

"(6) requiring the contractor to revise any technical data delivered under the contract to reflect engineering design changes made during the performance of the contract and affecting the form, fit, and function of the items specified in the contract and to deliver such revised technical data to an agency within a time specified in the contract;

"(7) requiring the contractor to furnish written assurance at the time the technical data is delivered or is made available that the technical data is complete and accurate and satisfies the requirements of the contract concerning technical data;

"(8) establishing remedies to be available to the United States when technical data required to be delivered or made available under the contract is found to be incomplete or inadequate or to not satisfy the requirements of the contract concerning technical data; and

"(9) authorizing the head of the agency to withhold payments under the contract (or exercise such other remedies as the head of the agency considers appropriate) during any period if the contractor does not meet the requirements of the contract pertaining to the delivery of technical data.".

(b) Section 2320(a) of title 10, United States Code, is amended by striking out "in regulations prescribed as part" and inserting in lieu thereof "in regulations of the Department of Defense prescribed as part".

Effective date. 41 USC 418a note.

(c) The amendment made by subsection (a) shall take effect on the date of enactment of this Act. The regulations required by such amendment shall be issued not later than July 1, 1985.

Report.

(d) Within 60 days after the date the regulations required by the amendment made by subsection (a) are prescribed, the Secretary of Defense, the Administrator of General Services, and the Administrator of the National Aeronautics and Space Administration shall submit to Congress a joint report describing in detail how those regulations give consideration to the factors specified for consideration in that section.

PUBLICATION OF PROPOSED REGULATIONS

SEC. 302. (a) The Act is further amended by inserting after section 21 (as added by section 301 of this Act) the following new section:

"PUBLICATION OF PROPOSED REGULATIONS

Federal Register, publication. 41 USC 418b.

"SEC. 22. (a) Except as provided in subsection (d), no procurement policy, regulation, procedure, or form (including amendments or modifications thereto) relating to the expenditure of appropriated funds that has (1) a significant effect beyond the internal operating procedures of the agency issuing the procurement policy, regulation, procedure or form, or (2) a significant cost or administrative impact on contractors or offerors, may take effect until 30 days after the procurement policy, regulation, procedure, or form is published for public comment in the Federal Register pursuant to subsection (b).

"(b) Subject to subsection (c), the head of the agency shall cause to be published in the Federal Register a notice of the proposed procurement policy, regulation, procedure, or form and provide for a public comment period for receiving and considering the views of all interested parties on such proposal. The length of such comment period may not be less than 30 days.

"(c) Any notice of a proposed procurement policy, regulation, procedure, or form prepared for publication in the Federal Register shall include—

"(1) the text of the proposal or, if it is impracticable to publish the full text of the proposal, a summary of the proposal and a statement specifying the name, address, and telephone number

of the officer or employee of the executive agency from whom the full text may be obtained; and

"(2) a request for interested parties to submit comments on the proposal and shall include the name and address of the officer or employee of the Government designated to receive such comments.

"(d)(1) The requirements of subsections (a) and (b) may be waived by the officer authorized to issue a procurement policy, regulation, procedure, or form if urgent and compelling circumstances make compliance with such requirements impracticable.

"(2) A procurement policy, regulation, procedure, or form with respect to which the requirements of subsections (a) and (b) are waived under paragraph (1) shall be effective on a temporary basis if—

"(A) a notice of such procurement policy, regulation, procedure, or form is published in the Federal Register and includes a statement that the procurement policy, regulation, procedure, or form is temporary; and

"(B) provision is made for a public comment period of 30 days beginning on the date on which the notice is published.

After considering the comments received, the head of the agency waiving the requirements of subsections (a) and (b) under paragraph (1) may issue the final procurement policy, regulation, procedure, or form.".

(b) The procedures required by the amendment made by subsection (a) shall apply with respect to procurement policies, regulations, procedures, or forms that an agency issues in final form on or after the date which is 30 days after the date of enactment of this Act.

Effective date. 41 USC 418b note.

(c)(1) Section 2303a of title 10, United States Code, is repealed.

Ante, p. 2590.

(2) The table of sections of chapter 137 of such title is amended by striking out the item pertaining to section 2303a.

PROCUREMENT NOTICES

SEC. 303. (a) Section 18 of the Office of Federal Procurement Policy Act is amended to read as follows:

"PROCUREMENT NOTICE

"SEC. 18. (a)(1) Except as provided in subsection (c)—

41 USC 416. Public information.

"(A) an executive agency intending to—

"(i) solicit bids or proposals for a contract for property or services for a price expected to exceed $10,000; or

"(ii) place an order, expected to exceed $10,000, under a basic agreement, basic ordering agreement, or similar arrangement,

shall furnish for publication by the Secretary of Commerce a notice described in subsection (b); and

"(B) an executive agency awarding a contract for property or services for a price exceeding $25,000, or placing an order referred to in clause (A)(ii) exceeding $25,000, shall furnish for publication by the Secretary of Commerce a notice announcing the award or order if there is likely to be any subcontract under such contract or order.

"(2) The Secretary of Commerce shall publish promptly in the Commerce Business Daily each notice required by paragraph (1).

"(3) Whenever an executive agency is required by paragraph (1)(A) to furnish a notice to the Secretary of Commerce, such executive agency may not—

"(A) issue the solicitation earlier than 15 days after the date on which the notice is published by the Secretary of Commerce; or

"(B) establish a deadline for the submission of all bids or proposals in response to the notice required by paragraph (1)(A) that—

"(i) in the case of an order under a basic agreement, basic ordering agreement, or similar arrangement, is earlier than the date 30 days after the date the notice required by paragraph (1)(A)(ii) is published;

Research and development.

"(ii) in the case of a solicitation for research and development, is earlier than the date 45 days after the date the notice required by paragraph (1)(A)(i) is published; or

"(iii) in any other case, is earlier than the date 30 days after the date the solicitation is issued.

"(b) Each notice of solicitation required by subsection (a)(1)(A) shall include—

"(1) an accurate description of the property or services to be contracted for, which description (A) shall not be unnecessarily restrictive of competition, and (B) shall include, as appropriate, the agency nomenclature, National Stock Number or other part number, and a brief description of the item's form, fit, or function, physical dimensions, predominant material of manufacture, or similar information that will assist a prospective contractor to make an informed business judgment as to whether a copy of the solicitation should be requested;

"(2) provisions that—

"(A) state whether the technical data required to respond to the solicitation will not be furnished as part of such solicitation, and identify the source in the Government, if any, from which the technical data may be obtained; and

"(B) state whether an offeror, its product, or service must meet a qualification requirement in order to be eligible for award, and, if so, identify the office from which the qualification requirement may be obtained;

"(3) the name, business address, and telephone number of the contracting officer;

"(4) a statement that all responsible sources may submit a bid, proposal, or quotation (as appropriate) which shall be considered by the agency; and

"(5) in the case of a procurement using procedures other than competitive procedures, a statement of the reason justifying the use of such procedures and the identity of the intended source.

"(c)(1) A notice is not required under subsection (a)(1) if—

"(A) the notice would disclose the executive agency's needs and the disclosure of such needs would compromise the national security;

"(B) the proposed procurement would result from acceptance of—

"(i) any unsolicited proposal that demonstrates a unique and innovative research concept and the publication of any notice of such unsolicited research proposal would disclose the originality of thought or innovativeness of the proposal

or would disclose proprietary information associated with the proposal; or

"(ii) a proposal submitted under section 9 of the Small Business Act;

"(C) the procurement is made against an order placed under a requirements contract;

"(D) the procurement is made for perishable subsistence supplies; or

"(E) the procurement is for utility services, other than telecommunication services, and only one source is available. Utilities.

"(2) The requirements of subsection (a)(1)(A) do not apply to any procurement under conditions described in paragraph (2), (3), (4), (5), or (7) of section 303(c) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(c)) or paragraph (2), (3), (4), (5), or (7) of section 2304(c) of title 10, United States Code.

"(3) The requirements of subsection (a)(1)(A) shall not apply in the case of any procurement for which the head of the executive agency makes a determination in writing, after consultation with the Administrator for Federal Procurement Policy and the Administrator of the Small Business Administration, that it is not appropriate or reasonable to publish a notice before issuing a solicitation.

"(d) An executive agency shall make available to any business concern, or the authorized representative of such concern, the complete solicitation package for any on-going procurement announced pursuant to a notice under subsection (e). An executive agency may require the payment of a fee, not exceeding the actual cost of duplication, for a copy of such package.". Public information.

(b) The amendment made by subsection (a) shall take effect with respect to any solicitation issued after March 31, 1985. Effective date. 41 USC 416 note.

(c) The provisions of the amendment made by subsection (a) of this section shall apply to the Tennessee Valley Authority only with respect to procurements to be paid from appropriated funds. Tennessee Valley Authority. 41 USC 416 note.

TITLE IV—AMENDMENTS TO THE SMALL BUSINESS ACT

CERTIFICATE OF COMPETENCY

SEC. 401. Section 8(b)(7)(C) of the Small Business Act (15 U.S.C. 637(b)(7)(C)) is amended by adding at the end thereof the following: "Notwithstanding the first sentence of this subparagraph, the Administration may not establish an exemption from referral or notification or refuse to accept a referral or notification from a Government procurement officer made pursuant to subparagraph (A) or (B) of this paragraph, but nothing in this paragraph shall require the processing of an application for certification if the small business concern to which the referral pertains declines to have the application processed.".

SMALL BUSINESS SUBCONTRACTING POLICY STATEMENTS

SEC. 402. (a) Section 8(d)(1) of the Small Business Act (15 U.S.C. 637(d)(1)) is amended by striking out the period at the end thereof and inserting in lieu thereof the following: ", including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of

their subcontracts with small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals.".

(b) Section 8(d)(3)(A) of the Small Business Act (15 U.S.C. 637(d)(3)(A)) is amended by striking out the period at the end thereof and inserting in lieu thereof the following: ", including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals.".

Disadvantaged persons.

BREAKOUT PROCUREMENT CENTER REPRESENTATIVES

SEC. 403. (a) Section 15 of the Small Business Act (15 U.S.C. 644) is amended—

(1) by redesignating subsection (l) as subsection (m); and

(2) by inserting after subsection (k) the following new subsection:

"(l)(1) The Administration shall assign to each major procurement center a breakout procurement center representative with such assistance as may be appropriate. The breakout procurement center representative shall carry out the activities described in paragraph (2), and shall be an advocate for the breakout of items for procurement through full and open competition, whenever appropriate, while maintaining the integrity of the system in which such items are used, and an advocate for the use of full and open competition, whenever appropriate, for the procurement of supplies and services by such center. Any breakout procurement center representative assigned under this subsection shall be in addition to the representative referred to in subsection (k)(6).

"(2) In addition to carrying out the responsibilities assigned by the Administration, a breakout procurement center representative is authorized to—

"(A) attend any provisioning conference or similar evaluation session during which determinations are made as to whether requirements are to be procured through other than full and open competition and make recommendations with respect to such requirements to the members of such conference or session;

"(B) review, at any time, restrictions on competition previously imposed on items through acquisition method coding or similar procedures, and recommend to personnel of the appropriate activity the prompt reevaluation of such limitations;

"(C) review restrictions on competition arising out of restrictions on the rights of the United States in technical data, and, when appropriate, recommend that personnel of the appropriate activity initiate a review of the validity of such an asserted restriction;

"(D) obtain from any governmental source, and make available to personnel of the appropriate activity, unrestricted technical data necessary for the preparation of a competitive solicitation package for any item of supply or service previously procured noncompetitively due to the unavailability of such unrestricted technical data;

"(E) have access to the unclassified procurement records and other data of the procurement center;

"(F) receive unsolicited engineering proposals and, when appropriate (i) conduct a value analysis of such proposal to determine whether such proposal, if adopted, will result in lower costs to the United States without substantially impeding legitimate acquisition objectives and forward to personnel of the appropriate activity recommendations with respect to such proposal, or (ii) forward such proposals without analysis to personnel of the activity responsible for reviewing such proposals and who shall furnish the breakout procurement center representative with information regarding the disposition of any such proposal; and

"(G) review the systems that account for the acquisition and management of technical data within the procurement center to assure that such systems provide the maximum availability and access to data needed for the preparation of offers to sell to the United States those supplies to which such data pertain which potential offerors are entitled to receive.

"(3) A breakout procurement center representative is authorized to appeal a failure to act favorably on any recommendation made pursuant to paragraph (2). Such appeal shall be in writing, specifically reciting both the circumstances of the appeal and the basis of the recommendation. The appeal shall be decided by a person within the employ of the appropriate activity who is at least one supervisory level above the person who initially failed to act favorably on the recommendation. Such appeal shall be decided within 30 calendar days of its receipt. Effective date.

"(4) The Administration shall assign and co-locate at least two small business technical advisers to each major procurement center in addition to such other advisers as may be authorized from time to time. The sole duties of such advisers shall be to assist the breakout procurement center representative for the center to which such advisers are assigned in carrying out the functions described in paragraph (2) and the representatives referred to in subsection (k)(6).

"(5)(A) The breakout procurement center representatives and technical advisers assigned pursuant to this subsection shall be—

"(i) full-time employees of the Administration; and

"(ii) fully qualified, technically trained, and familiar with the supplies and services procured by the major procurement center to which they are assigned.

"(B) In addition to the requirements of subparagraph (A), each breakout procurement center representative, and at least one technical adviser assigned to such representative, shall be an accredited engineer.

"(C) The Administration shall establish personnel positions for breakout procurement representatives and advisers assigned pursuant to this subsection, which are classified at a grade level of the General Schedule sufficient to attract and retain highly qualified personnel.

"(6) For purposes of this subsection, the term 'major procurement center' means a procurement center of the Department of Defense that awarded contracts for items other than commercial items totaling at least $150,000,000 in the preceding fiscal year, and such other procurement centers as designated by the Administrator.".

15 USC 644 note.

(b)(1) The Administrator of the Small Business Administration and the Comptroller General of the United States shall jointly establish standards for measuring cost savings achieved through the efforts of breakout procurement center representatives and for measuring the extent to which competition has been increased as a result of such efforts. Thereafter, the Administrator shall annually prepare and submit to the Congress a report setting forth—

Report.

(A) the cost savings achieved during the year covered by such report through the efforts of breakout procurement center representatives;

(B) an evaluation of the extent to which competition has been increased as a result of such efforts; and

(C) such other information as the Administrator may deem appropriate.

Report.

(2) Within 180 days following the submission of the second annual report to Congress by the Administrator, the Comptroller General shall report to the Congress an evaluation of the Administration's adherence to the standards jointly established and the accuracy of the information the Administration has submitted to the Congress.

PROCUREMENT NOTICES

SEC. 404. (a) Section 8 of the Small Business Act (15 U.S.C. 637) is amended by striking out subsection (e) and inserting in lieu thereof the following new subsections:

"(e)(1) Except as provided in subsection (g)—

"(A) an executive agency intending to—

"(i) solicit bids or proposals for a contract for property or services for a price expected to exceed $10,000; or

"(ii) place an order, expected to exceed $10,000, under a basic agreement, basic ordering agreement, or similar arrangement,

shall furnish for publication by the Secretary of Commerce a notice described in subsection (b); and

"(B) an executive agency awarding a contract for property or services for a price exceeding $25,000, or placing an order referred to in clause (A)(ii) exceeding $25,000, shall furnish for publication by the Secretary of Commerce a notice announcing the award or order if there is likely to be any subcontract under such contract or order.

"(2) The Secretary of Commerce shall publish promptly in the Commerce Business Daily each notice required by paragraph (1).

"(3) Whenever an executive agency is required by paragraph (1)(A) to furnish a notice to the Secretary of Commerce, such executive agency may not—

Effective date.

"(A) issue the solicitation earlier than 15 days after the date on which the notice is published by the Secretary of Commerce; or

"(B) establish a deadline for the submission of all bids or proposals in response to the notice required by paragraph (1)(A) that—

"(i) in the case of an order under a basic agreement, basic ordering agreement, or similar arrangement, is earlier than

Effective date.

the date 30 days after the date the notice required by paragraph (1)(A)(ii) is published;

"(ii) in the case of a solicitation for research and development, is earlier than the date 45 days after the date the notice required by paragraph (1)(A)(i) is published; or

Research and development.

"(iii) in any other case, is earlier than the date 30 days after the date the solicitation is issued.

"(f) Each notice of solicitation required by subsection (e)(1)(A) shall include—

"(1) an accurate description of the property or services to be contracted for, which description (A) shall not be unnecessarily restrictive of competition, and (B) shall include, as appropriate, the agency nomenclature, National Stock Number or other part number, and a brief description of the item's form, fit, or function, physical dimensions, predominant material of manufacture, or similar information that will assist a prospective contractor to make an informed business judgment as to whether a copy of the solicitation should be requested;

"(2) provisions that—

"(A) state whether the technical data required to respond to the solicitation will not be furnished as part of such solicitation, and identify the source in the Government, if any, from which the technical data may be obtained; and

"(B) state whether an offeror, its product, or service must meet a qualification requirement in order to be eligible for award, and, if so, identify the office from which a qualification requirement may be obtained;

"(3) the name, business address, and telephone number of the contracting officer;

"(4) a statement that all responsible sources may submit a bid, proposal, or quotation (as appropriate) which shall be considered by the agency; and

"(5) in the case of a procurement using procedures other than competitive procedures, a statement of the reason justifying the use of such procedures and the identity of the intended source.

"(g)(1) A notice is not required under subsection (a)(1) if—

"(A) the notice would disclose the executive agency's needs and the disclosure of such needs would compromise the national security;

"(B) the proposed procurement would result from acceptance of—

"(i) any unsolicited proposal that demonstrates a unique and innovative research concept and the publication of any notice of such unsolicited research proposal would disclose the originality of thought or innovativeness of the proposal or would disclose proprietary information associated with the proposal; or

"(ii) a proposal submitted under section 9 of this Act;

"(C) the procurement is made against an order placed under a requirements contract;

"(D) the procurement is made for perishable subsistence supplies; or

"(E) the procurement is for utility services, other than telecommunication services, and only one source is available.

"(2) The requirements of subsection (a)(1)(A) do not apply to any procurement under conditions described in paragraph (2), (3), (4), (5), or (7) of section 303(c) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(c)) or paragraph (2), (3), (4), (5), or (7) of section 2304(c) of title 10, United States Code.

Ante, p. 1175.
Ante, p. 1187.

"(3) The requirements of subsection (a)(1)(A) shall not apply in the case of any procurement for which the head of the executive agency makes a determination in writing, after consultation with the Administrator for Federal Procurement Policy and the Administrator of the Small Business Administration, that it is not appropriate or reasonable to publish a notice before issuing a solicitation.

"(h)(1) An executive agency may not award a contract using procedures other than competitive procedures unless—

"(A) except as provided in paragraph (2), a written justification for the use of such procedures has been approved—

"(i) in the case of a contract for an amount exceeding $100,000 (but equal to or less than $1,000,000), by the advocate for competition for the procuring activity (without further delegation);

Armed Forces. Government organization and employees.

"(ii) in the case of a contract for an amount exceeding $1,000,000 (but equal to or less than $10,000,000), by the head of the procuring activity or a delegate who, if a member of the Armed Forces, is a general or flag officer, or, if a civilian, is serving in a position in grade GS–16 or above under the General Schedule (or in a comparable or higher position under another schedule); or

"(iii) in the case of a contract for an amount exceeding $10,000,000, by the senior procurement executive of the agency designated pursuant to section 16(3) of the Office of Federal Procurement Policy Act (41 U.S.C. 414(3)) (without further delegation); and

97 Stat. 1330.

"(B) all other requirements applicable to the use of such procedures under title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.) or chapter 137 of title 10, United States Code, as appropriate, have been satisfied.

"(2) The same exceptions as are provided in section 303(f)(2) of the Federal Property and Administration Services Act of 1949 (41 U.S.C. 253(f)(2)) or section 2304(f)(2) of title 10, United States Code, shall apply with respect to the requirements of paragraph (1)(A) of this subsection in the same manner as such exceptions apply to the requirements of section 303(f)(1) of such Act or section 2304(f)(1) of such title, as appropriate.

"(i) An executive agency shall make available to any business concern, or the authorized representative of such concern, the complete solicitation package for any on-going procurement announced pursuant to a notice under subsection (e). An executive agency may require the payment of a fee, not exceeding the actual cost of duplication, for a copy of such package.

"(j) For purposes of this section, the term 'executive agency' has the meaning provided such term in section 4(1) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(1)).".

97 Stat. 1326. *Ante*, p. 1195.

(b) The amendment made by subsection (a) shall take effect with respect to any solicitation for bids or proposals issued after March 31, 1985.

Effective date.

Tennessee Valley Authority.

(c) The provisions of the amendment made by subsection (a) of this section shall apply to the Tennessee Valley Authority only with respect to procurements to be paid from appropriated funds.

TITLE V—OTHER PROCUREMENT PROVISIONS

REGULATIONS ON OVERHEAD

SEC. 501. Not later than 180 days after the date of enactment of this Act the single system of Government-wide procurement regulations (as defined in section 4(4)) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(4)) shall be revised to include or amend, as appropriate, provisions relating to the manner in which each executive agency (as defined in section 4(1) of such Act (41 U.S.C. 403(1)) may negotiate prices for supplies to be obtained through the use of other than competitive procedures, as defined in section 4(b) of such Act (41 U.S.C. 403(b)). Such revision shall specify the incurred overhead a contractor may appropriately allocate to such supplies, and shall require the contractor to identify those supplies which it did not manufacture or to which it did not contribute significant value. Nothing in this subsection shall require the submission of cost or pricing data not otherwise required by law.

97 Stat. 1326.
Ante, p. 1195.

PERSONNEL EVALUATIONS

Sec. 502. The head of each executive agency that is subject to the provisions of title III of the Federal Property and Administrative Services Act of 1949 shall ensure, with respect to the employees of that agency whose primary duties and responsibilities pertain to the award of contracts subject to the provisions of this Act, that the performance appraisal system applicable to such employees affords appropriate recognition to, among other factors, efforts—

Government organization and employees.
41 USC 251.

(1) to increase competition and achieve cost savings through the elimination of procedures that unnecessarily inhibit full and open competition;

(2) to further the purposes of the Small Business and Federal Procurement Competition Enhancement Act of 1984 and the Defense Procurement Reform Act of 1984; and

(3) to further such other objectives and purposes of the Federal acquisition system as may be authorized by law.

REPORT ON PRIME CONTRACTORS QUALIFYING ADDITIONAL SOURCES

SEC. 503. Not later than July 1, 1985, the Administrator of the Office of Federal Procurement Policy shall submit to the Congress a report on the desirability and feasibility of various methods that may be used to qualify competitive sources for subsystems, assemblies, and components acquired as part of a major system established by an agency pursuant to Office of Management and Budget (OMB) Circular A-109 entitled "Major Systems Acquisitions" and likely to be reprocured in substantial quantities during the system's service life. Such report shall discuss the desirability and feasibility of a contractual requirement that, in those situations where a prime contractor qualifies its subcontractors and suppliers, the prime contractor be required to—

(1) qualify at least two sources for each major subsystem, assembly, or component during the term of the contract; or

(2) furnish to the United States as a deliverable item under the contract, the qualification standards and processes employed by the prime contractor, so as to permit the United States to qualify additional sources for future competitive procurements.

TECHNICAL AMENDMENTS TO COMPETITION IN CONTRACTING ACT OF 1984

SEC. 504. (a)(1) Section 303(b) of the Federal Property and Administration Services Act of 1949 (41 U.S.C. 253) is amended by striking out paragraph (2) and inserting in lieu thereof the following:

"(2) An executive agency may provide for the procurement of property or services covered by this section using competitive procedures, but excluding other than small business concerns in furtherance of sections 9 and 15 of the Small Business Act (15 U.S.C. 639; 644).

"(3) A contract awarded pursuant to the competitive procedures referred to in paragraphs (1) and (2) shall not be subject to the justification and approval required by subsection (f)(1).".

41 USC 253.

(2) Section 303(f) of such Act is amended by striking out the last sentence of paragraph (2) and by inserting in lieu thereof the following: "The justification and approval required by paragraph (1) is not required in the case of a procurement permitted by subsection (c)(7) or in the case of a procurement conducted under—

"(A) the Act of June 25, 1938 (41 U.S.C. 46 et seq.), popularly referred to as the Wagner-O'Day Act; or

"(B) the authority of section 8(a) of the Small Business Act (15 U.S.C. 637).".

(3) Section 309(b) of such Act is amended—

(A) by striking out the period at the end of paragraph (3) and by inserting in lieu thereof a semicolon; and

(B) by adding at the end thereof the following new paragraphs:

"(4) procurements conducted in furtherance of section 15 of the Small Business Act (15 U.S.C. 644) as long as all responsible business concerns that are entitled to submit offers for such procurements are permitted to compete; and

"(5) a competitive selection of research proposals resulting from a general solicitation and peer review or scientific review (as appropriate) solicited pursuant to section 9 of the Small Business Act (15 U.S.C. 638).".

Ante, p. 1180.

(4) Section 309(c) of such Act is amended by striking out "and 'responsible source' have" and inserting in lieu thereof ", 'responsible source', 'technical data', 'major system', 'item', 'item of supply', and 'supplies' have".

Ante, p. 1187.

(b)(1) Section 2304(b) of title 10, United States Code, is amended by striking out paragraph (2) and inserting in lieu thereof the following:

"(2) An executive agency may provide for the procurement of property or services covered by this section using competitive procedures, but excluding other than small business concerns in furtherance of sections 9 and 15 of the Small Business Act (15 U.S.C. 639; 644).

"(3) A contract awarded pursuant to the competitive procedures referred to in paragraphs (1) and (2) shall not be subject to the justification and approval required by subsection (f)(1).".

(2) Section 2304(f) of such title is amended by striking out the last sentence of paragraph (2) and by inserting in lieu thereof the following: "The justification and approval required by paragraph (1) is not required in the case of a procurement permitted by subsection (c)(7) or in the case of a procurement conducted under—

"(A) the Act of June 25, 1938 (41 U.S.C. 46 et seq.), popularly referred to as the Wagner-O'Day Act; or

"(B) the authority of section 8(a) of the Small Business Act (15 U.S.C. 637).".

(3) Section 2302(2) of such title is amended—

(A) by striking out "and" at the end of subparagraph (B); *Ante*, p. 1186.

(B) by striking out the period at the end of paragraph (C) and by inserting in lieu thereof a semicolon; and

(C) by adding at the end thereof the following new subparagraphs:

"(D) procurements conducted in furtherance of section 15 of the Small Business Act (15 U.S.C. 644) as long as all responsible business concerns that are entitled to submit offers for such procurements are permitted to compete; and

"(E) a competitive selection of research proposals resulting from a general solicitation and peer review or scientific review (as appropriate) solicited pursuant to section 9 of the Small Business Act (15 U.S.C. 638).".

REPEAL

SEC. 505. Section 2311 of title 10, United States Code (as amended by section 1214 of the Defense Procurement Reform Act of 1984), is amended—

(1) by striking out "(a)" at the beginning of subsection (a); and

(2) by striking out subsection (b).

Approved October 30, 1984.

LEGISLATIVE HISTORY—H.R. 4209 (S. 2489):

HOUSE REPORT No. 98-528 (Comm. on Small Business).
SENATE REPORT No. 98-523 accompanying S. 2489 (Comm. on Small Business).
CONGRESSIONAL RECORD, Vol. 130 (1984):
May 21, considered and passed House.
Aug. 7, considered and passed Senate, amended, in lieu of S. 2489.
Oct. 2, House agreed to Senate amendments with amendments.
Oct. 4, Senate concurred in House amendments.

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